PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

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

Friday, 20 June 2003
Brisbane

WITNESSES

101 The committee commenced at 9.37 a.m.

ROSSLYN MUNRO, examined:

The CHAIR: Good morning, ladies and gentlemen. It is my pleasure to recommence our public hearing. I want to welcome to our committee hearing this morning Ms Rosslyn Munro on behalf of the Youth Advocacy Centre. Thank you very much for coming, Ms Munro. We appreciate your time and your contribution to the committee's hearing. The way in which we proceeded yesterday was to invite each witness to speak for three to five minutes by way of a general opening statement and then we will proceed to discuss issues by question and answer. So we would be pleased if you would be happy to go that way this morning.

Ms Munro: Sure.

The CHAIR: Would you like to present us with some opening remarks?

Ms Munro: Yes. My name is Rosslyn Munro and I represent the Youth Advocacy Centre in my capacity as the director of that organisation. It might be of some value for me to outline what our centre does. We are a community legal centre and we offer legal and welfare assistance to young people between the ages of 10 and 16 years. The geographical area which the centre services is largely the Brisbane area, with some occasional assistance to young people in other areas of the state. The nature of the centre's work involves legal advice and representation, education, counselling, family mediation and support for young people around issues such as accommodation and income. The centre also participates in law and policy reform activities.

The centre has been in operation since 1981 and we have a recurrent funding base from the state and Commonwealth Attorneys-General and the Department of Families in Queensland. The purpose of my submission is that I would be interested in providing some remarks to the committee today because we obviously have a vast amount of experience with young people and in particular young people's interaction with the police. As part of my opening remarks perhaps the best way to illustrate that is to provide you with a couple of recent casework examples from the centre that are representative of the nature of the work that we do.

The first example is a client who did make a complaint to the CMC about his experiences with the police. I would like to emphasise that this is quite an unusual set of circumstances in that this young person found the courage to do that. The complaint revolved around the police assaulting our client in the course of an interview early in 2002. In February a solicitor of our centre wrote a complaint to the CMC about the incident with the instructions of that particular client. Later in February the CMC replied and with that reply indicated that the matter would be referred to the Queensland Police Service for further investigation and the CMC would retain a monitoring role of that investigation.

In May 2003 the Queensland police sent YAC a letter advising us that through their internal investigation they were able to ascertain that in fact there were grounds for that complaint due to a confession of the police officer involved and that they had seen to the matter by providing extra supervision and training to the police officer involved. During that time of 16 months between the initial complaint and the outcome our client was contacted for an interview with the police. However, the solicitor who was representing the client was not contacted about that interview. At the time of the complaint our client did not have a criminal record. He is now entrenched in the criminal justice system and is understandably very disenchanted with the police and the system that represents the police.

The second casework example is probably a more typical example of a client who has had an interaction with the police but is not interested in making a complaint for a number of different reasons. This particular example involved a 14-year-old boy. He was held in an interview room with a police officer and there was no-one else in the room. Prior to being interviewed, he had his head bashed against a concrete wall of the interview room. This action rendered our client relatively incoherent. However, the police interview ensued and the client was charged with a very minor matter. When the client approached the centre about advice we advised him of his right to make a complaint against this police officer. He is yet to do that and it is unlikely that he will, because he is very fearful of any repercussions that it may have on him and his family.

I guess those two case examples are really quite poignant for all of the work of the centre, because both represent the fear of young people to make complaints against the police as well

as what the complaints process offers a young person at the end of the day and whether they can have confidence in that process if they pluck up the courage to engage in it.

The CHAIR: Thank you very much. We will now proceed to questions and answers. Just pursuing the two case studies that you have provided us with, to what extent are you able to say—and you may not be able to say at all—that the features of the two cases that you have cited this morning are illustrative of the experiences of young people generally that you come in contact with?

Ms Munro: Sure. In my conversations with one of the solicitors at the centre who does duty lawyer on a weekly basis at the Brisbane Children's Court, in her estimation she would come across clients in that duty lawyer session at least once every two weeks who would have a story about their treatment by the police. In all of those instances, if those people have spoken to our solicitor they would be advised of their right to pursue a complaint.

The CHAIR: Are you saying then that only in a very small number of cases do people who perceive that they have a grievance actually take up the complaint process?

Ms Munro: Absolutely. The perception of young people is that, first and foremost, they are powerless in the face of the kind of authority that they are faced with. It is well recognised in research that young people are at a disadvantage when they are dealing with people in authority. They are socialised to accept that authority and quite often accept advice and information from the police which is to their legal detriment in the long term. So they are highly vulnerable. When they are told that a complaint may take 18 months to two years to finalise, it is inconceivable to a child's sense of time that it is going to take that long. For a 14-year-old, two years is one-seventh of his life. So the time frames and the fear of reprisal—whether it is founded or not—are very real for young people. There is a tremendous reluctance because they think, 'Why engage in another bureaucratic process when I know at the end of the day I'm just a kid and I'm not going to be believed?'

102 **The CHAIR:** What is the situation with parents and guardians to the extent that you have contact with them through your contact with young people? What is the reaction of parents and guardians to the possibility of a grievance being lodged through the complaints process in relation to the experience of their child?

Ms Munro: I guess there are two responses I would give to that. Our principles that we work with are that we take instructions from our client. If our client does not want to make a complaint we have to accept those instructions; we do not take instructions from their other support networks. The other point I would make is that rarely do the young people whom we come across have an extensive support network that can support a young person to perhaps encourage them to go through the process. So if a young person has got unstable accommodation and infrequent income, the chance of them wanting to engage in a bureaucratic process unsupported is unlikely. Even when they are offered support through our centre, it is still not taken up as an option in the majority of cases.

Mr HOBBS: Is there any evidence of reprisals that have actually occurred? You mentioned instances where some harsh handling has been done in the first instance, but is there any evidence of ongoing reprisals?

Ms Munro: I guess my references are to the perceptions of young people. Some of the background to police interaction with young people is that young people are the largest segment in the population that have the most frequent contact with police. Whilst we may not be able to bring evidence to the table that there are actually reprisals, these young people whom we largely deal with who are either engaged in the youth justice system or are on the fringes of the youth justice system are likely to have fairly regular contact with the police. So it is difficult to actually work out whether any subsequent treatment of that young person is a direct result of them making a complaint or is simply a pattern of behaviour between young people and police in any event.

Mr HOBBS: What sort of incidents would occur in the first place? What sort of things do they do? How do they come to the attention of the police?

Ms Munro: I guess we talk about the trifecta at YAC. There might be something going on in a public place. A police officer may approach a group of young people because they might be drawing attention to themselves. Young people are boisterous and perhaps tell the police officer

to get lost. So there is the trifecta of abusing the police. There might be other sorts of offences that are then tacked on to that initial contact with the police. So the fact that it is an interaction with the police already ups the ante in terms of the nature of the charges that can be laid against the young person. If it was against another citizen it would be quite different.

The CHAIR: Does your organisation have contact at some level—perhaps even at a senior level—with the Juvenile Aid Bureau section of the Queensland Police Service about these sorts of issues?

Ms Munro: We would have from time to time on a case-by-case basis. I guess we would have those interactions in the context of particular matters, but it is not something that we have done on a continuous basis from a policy perspective—to talk to Juvenile Aid Bureau—simply because of our advocacy principles. We very much need to be seen as very separate from the institutions in which we are assisting young people to negotiate the systems of those institutions.

The CHAIR: What about contact between your centre and the CMC from time to time?

Ms Munro: Again on a case-by-case basis. We have spoken with members of the CMC from time to time. Usually the CMC does have some other agendas that they present to us when they are speaking to us. They see our organisation as a way of being able to find out information about other criminal activity. So some of the conversation is at cross-purposes as to our clients' needs and the CMC's needs.

The CHAIR: Can you elaborate on that? I am interested in what you are saying about your organisation being a possible source of additional essentially criminal intelligence. Is that what you are suggesting?

Ms Munro: Yes, that our clients may possibly come across things like paedophilia and that our clients may wish to disclose that to the CMC.

The CHAIR: Then, more generally, is there contact with the CMC in what the CMC might perceive as a proactive way of wanting to work with you on issues like criminal paedophilia?

Ms Munro: Not in my experience. I would say the majority of our contact with the CMC would be on a case-by-case basis rather than a strategy as such.

Mr SHINE: Do you have any concerns with the conduct of the CMC so far as your clients are concerned?

Ms Munro: I guess there are a number of barriers that we see deter young people from making a complaint as well as if they do engage in the complaints process how that dissuades young people in the future to complain. One of those would be the time frame in which complaints are being resolved.

Mr SHINE: That was that first example?

Ms Munro: Yes. The other issue is clearly the need to refer police misconduct to the police for investigation. We have grave concerns that there is not a perception of transparency and independence in that kind of process. It dissuades young people from wanting to go back to the institution that mistreated them in the first place.

Mr FLYNN: You mentioned the interaction between your organisation, the police and youth. Do you think this is a systemic issue or are we talking about retraining of police attitudes towards youth and educating youth perhaps about the way they might interact with police and get a better result? How would you interpret what is going on today?

Ms Munro: It cannot necessarily be allocated to one particular method of examination. Sure, there are systemic issues. Why do police have the most contact with young people? It is because young people do not have private spaces in which they can do their activities. So they need to be in public spaces in order to meet with their friends or do the things that young people do.

Mr FLYNN: So perhaps this is a societal problem rather than an issue that is created by either group that we are talking about at the moment?

Ms Munro: I think there is part of that. We recognise that we have very good relations with some police officers who are very concerned about the treatment of young people and that there are individual police officers who do these sorts of things. They do not want them in the force either. I think it is a combination of those things: the fact that young people have lots of

interaction with police and that there are individuals who do not behave appropriately when they exercise authority.

The CHAIR: You spoke earlier of young people perhaps not having great confidence in pursuing a complaint against police behaviour because the police will be undertaking the investigation. Is that not moderated to some extent by the fact that the complaint is made to the CMC and then the CMC oversee the investigation that might actually be undertaken by police officers in the QPS?

Ms Munro: I do not think that, from the young person's perspective, they differentiate between that. They are both bureaucratic, legalistic processes. The further they are away from that, the better. An example of this is that on the brochure that the CMC puts out about making a complaint against the police is a police badge. That information is not necessarily friendly to a young person. They see the police badge and that is enough to deter them. Sorry, I have lost my train of thought.

The CHAIR: The extent to which knowledge that the investigation is oversighted by the CMC, although done by the QPS, might still be of some comfort.

Ms Munro: In the first casework example I gave you, whilst the CMC indicated they did have a monitoring process, we did not see any evidence of that going on. There was no further communication between the CMC and the centre about the progress of those investigations and how those investigations would be carried out. Whilst there might be some monitoring going on from people outside the process, it is not very evident.

The CHAIR: So is it the case that there is a perception of no news, therefore nothing is happening?

Ms Munro: Absolutely, yes.

The CHAIR: You mentioned the phrase 'bureaucratic processes' earlier. Might it be the case that with young people, particularly the sorts of young people whom you might be helping, the system needs processes away from the bureaucracy; it may be at low level, informal, more direct contact by young people through your organisation at perhaps a more divisional or regional level of the Police Service or the CMC dealing one-on-one with an officer of the QPS or the CMC in a meeting situation? Are there other ways of exploring building a relationship that enables the issue and dispute to be identified and resolved?

Ms Munro: I think they are interesting ideas to explore. The crux of that would be to ensure that the young person has someone they trust to whom they can tell their story. If they do not trust the person they will not tell them the story. That is why organisations like us hear the stories. It is then yet another step to be able to say, 'You're going to be safe in this process,' and there is a guarantee of safety to allay the fears of reprisals or the fact that this is an independent inquiry, the fact that the police officer who mistreated them is completely separate from the police officer who might be investigating. It is very difficult to get young people to appreciate that. When they see the uniform, the uniform means one thing to them.

The CHAIR: What does it mean to them?

Ms Munro: It means authority and power and the sense that they are powerless to deal with that authority, that in the long run the police will get off on a legal technicality, that they will be able to work the system in a way that means that they are not going to be able to get a positive outcome. I am not saying that that is necessarily the case, but that is the perception.

Mr McNAMARA: It sort of raises the essential problem that we confront. There seems to be two views out there. One is the one that you are articulating, that young people see themselves as powerless and picked on in the legal system—and I am convinced you are right. I am a former Children's Court lawyer myself, so I know that young people are in courts all the time. But out there in the community there is another non-youth view which is quite the reverse, which is that children are only ever given a slap on the wrist and are virtually immune from prosecution. You have these two views that are not only contradictory but they cannot actually be held at the same time.

103 Along the way here this morning you have suggested that CMC publications directed at young people informing them of their rights and trying to reassure them are not hitting the mark. What is it that needs to be done to reconcile the two views? The reality is that young people do

have rights and do have ways that they can move through the system and it is not a slap-on-the-wrist approach. If publication and education is not getting there, is there an inherent problem with the whole system of representation—the very separation you refer to, which is necessary from a legal viewpoint between organisations such as yours and the JAB and even the CMC? Is that part of the problem? Do we need to overcome lawyer-client confidentiality issues in order to break through and get a whole message out there?

Ms Munro: I think we would be cautious about breaking the confidentiality of clients, because I think that is the basis in which we can assure clients that they can trust us, that it will not go any further—with some modifications, of course. As you are well aware, there is a tremendous amount of Queensland legal precedent to say that young people must be given special consideration in our juvenile justice system—principles such as proceeding with matters in a child's time frame and acknowledging that there is an inequity of power between authority and children.

I think it is a complex problem. I think education alone is not necessarily going to change perceptions because those perceptions are based on, for some young people, daily contact with police. They are very tough barriers to break down. However, I believe that we need to work towards trying to connect with those young people in a much more positive way in order to continue to encourage them. If there is a perception that the CMC and the police are one and the same, those barriers are going to be very difficult to break down.

Mr FLYNN: Given that this hearing has spent some time talking about issues of timeliness, one wonders if this is an issue for the young people. When they approach some authority—even you would be in a position of authority—to make a complaint, could some very informal immediate consultation take place to explain the issue? It would almost be a sort of mediation. Do you think that, with the presence of perhaps one of your staff, even on the same day or on the following day an informal program could be set in place to address this? The more time goes by, the more cynical the youth become towards police. Could we not find some way to structure an immediate, low-key approach to what could become bigger than *Ben Hur*?

Ms Munro: That sort of approach would be in line with dealing with the matter in a child's sense of time. So that is consistent with that idea. Again, it would be on a case-by-case basis. I think some young people would have the confidence to be able to face up again to a person that has mistreated them. Others will not. That will be for myriad reasons that are based on their experience of the police in the past.

Mr FLYNN: So at least be flexible?

Ms Munro: Absolutely. In our service we try to have a very flexible service delivery model because there are lots of instabilities in young people's lives. To be able to provide them with a good service we need to be able to accommodate some of those.

The CHAIR: Maybe there is room, too, in the area of the CMC identifying different groups of people who are potential complainants about police misconduct and tailoring their processes and approaches to actually suit the realities of the particular complainant groups. From time to time we are informed by the CMC of the particular efforts they put in in the whole area of Aboriginal and Torres Strait Islander relationships with police and the CMC. Maybe it is a case that young people of whatever ethnic background need to be considered for their special features, different from the general run-of-the-mill adult expectations that we have in the community. Different approaches that are more appropriate to deal with the reality of young people's lives might actually produce better results.

Ms Munro: I would agree that that is a good approach to take. If the CMC was interested in conducting some research around that to work out what is a good approach, the CMC needs to look outside their own set of statistics about young people who may already be making complaints but look to the young people who are not. That can be a challenging process in itself. Services such as ours that do duty lawyer services see a cross-section of those young people and see the kinds of cases that will not go to a complaint stage.

The CHAIR: Would your centre be happy to work with the CMC around the sorts of issues you have raised?

Ms Munro: We would certainly be happy to discuss that further.

The CHAIR: Thank you very much, Ms Munro. We much appreciate your time.

PETER ANDERSON, examined:

The CHAIR: Good morning, Mr Anderson. Thank you very much for making time available for the committee this morning. We would appreciate it if you could present briefly to us some opening remarks. Then we would be delighted to examine points of interest in questions and answers.

Mr Anderson: Thank you. At the outset I place on the record Education Queensland's appreciation for the assistance given to the department by the CMC in preventing and responding to misconduct by departmental officers. The department views the CMC as an ongoing partner and source of support in its efforts to promote high standards of probity and integrity in its work force.

Turning to the submission Education Queensland made to the parliamentary committee, may I begin by addressing the issue of the intersection between the need for immediate action to be taken by Education Queensland in response to particular circumstances that it faces and the requirement for Education Queensland to refer matters to the CMC and await its determination about how the matter is to be dealt with by the CMC.

There will be times when Education Queensland must make a prompt response to information received by it. These occasions will mostly relate to information it receives that raises child protection concerns—where it is necessary to act quickly to either suspend the employee or to relocate the employee to a non-student contact position. The decision to suspend or relocate the employee is made to protect the interests of both the employee and students from further allegations being made and to retain public confidence in school safety. Tension can arise between the need for Education Queensland to act quickly and provide the affected employee with some explanation for the decision affecting them and the requirement to refer the matter to the CMC and await its determination and possible intervention in the matter.

Even if the CMC makes a prompt decision to investigate the matter, there remains the tension between the CMC's investigative process, which may require that the subject officer not be notified of the matter until other evidence is first gathered by the CMC, and the need for the department to respond quickly to the immediate child protection concerns. Education Queensland can be placed in a difficult position if the subject officer harmed a student after the first notification to the department of the alleged misconduct and in any subsequent period of time that Education Queensland allowed the subject officer to remain in contact with students. To avoid this position and make student safety the paramount consideration in all interventions, Education Queensland would seek from the CMC a capacity to make a rapid response where this is necessary in particular circumstances.

I would like to turn to a separate point about the prioritising of cases and their management. Education Queensland seeks to give priority to the management of cases where officers are suspended from duty, usually on full remuneration. Clearly there is a significant cost to the taxpayer while an officer is absent from duties while continuing to receive their normal salary. There is also the individual impact on an officer, on their career being placed on hold during the period of the suspension. Education Queensland would support the CMC's prioritising its involvement in and completion of cases that involve an officer who is suspended from duty.

I turn to the issue of capacity building by the CMC. Education Queensland would support the CMC in its development of sector-wide guidelines for best practice for the conduct of investigations in the public sector. Such a document would help prevent disputation about what constitutes reasonable investigative practice and what does not. As the pre-eminent authority in Queensland for investigations in the Queensland public sector, we would be seeking support from the CMC in development of these particular guidelines. If they were created it would help develop a consistent approach to the conduct of investigations across the public sector.

Finally, Education Queensland looks forward to strengthening its partnership with the CMC in its efforts to prevent and better deal with misconduct of its work force.

The CHAIR: Thank you. In relation to complaints about Education Queensland employees other than in a child protection setting—it does not raise anything to do with child protection; it could be a fraud matter or something like that and it is referred to the CMC and then comes back to Education Queensland—who investigates within Education Queensland?

Mr Anderson: Education Queensland has internal investigators within the department as well as a standing offer arrangement with external investigators. So Education Queensland can call on either an internal or external investigator to deal with the particular matter. The way we have been proceeding to date is to seek to combine an external and internal investigator to work together on investigations because we find that that is a beneficial arrangement in terms of the internal investigator being able to advise the external investigator about internal arrangements that Education Queensland has. We also find that it is helpful having the external investigator to ensure that the investigation is seen to be and is actually independent in its conduct.

104 **The CHAIR:** Who has management of the investigation and to what extent do those involved in the investigation bring into the circle of knowledge of what is happening the district or normal bureaucratic structure that the teacher might be subject to in ordinary day-to-day life?

Mr Anderson: The Ethical Standards Unit in Education Queensland would coordinate those investigations and it would make sure that those people who are affected by the investigation are informed about what is going on and they are briefed about what is going to occur and what the status of the investigation might be at any particular time.

The CHAIR: I will put it differently: does the district director get advised of your Ethical Standards Unit's impending investigation?

Mr Anderson: If the referral has come through the district office, they would certainly be advised of the action that the Ethical Standards Unit would take. If the referral comes from, let us say, a source external to the department and there was a decision made by the Ethical Standards Unit to investigate the matter, even before that investigation had started our instructions to the investigator are always to advise the district director of their intention to commence an investigation into the particular matters so they are informed of investigators coming into their area of management or jurisdiction.

The CHAIR: Why would they need to know that?

Mr Anderson: It is as a courtesy to them. They find it useful to know if there is a matter that is affecting staff within their particular district and there may be some other implications for them in terms of management action that they may need to take in terms of responding to their day-to-day functions.

The CHAIR: You would expect that information to be retained confidentially at executive director level?

Mr Anderson: We would indeed.

The CHAIR: As if they were part of the investigation?

Mr Anderson: That is correct.

The CHAIR: How many investigators do you have within the Ethical Standards Unit?

Mr Anderson: We have recently gone through a training program where 40 principals, deputy principals and district officers went through a training process. The Ethical Standards Unit monitors and supports those investigators in the performance of their function. We quality assure and review the reports that are presented to us before they are subsequently provided to the decision maker, whether that be the director-general or the director of human resources, to make a decision on the report. Equally, where the request has come from the CMC, that report would also be forwarded to the CMC for its scrutiny.

The CHAIR: You were speaking earlier of linking up an external investigator with an internal investigator. So across that pool of 40 or so you would choose someone and then you would link them with someone from an external pool?

Mr Anderson: That is right. I should have mentioned that we have five organisations on that standing offer or panel arrangement. We can select who we think would best be capable of doing the particular investigation that we are seeking to be performed. On that panel of external investigators there is a combination of, what I would term, private investigation agencies. There would be other people on that panel who would be ex-public servants who are familiar with the public sector environment who also would be able to deal with particular types of matters such as grievances as well.

The CHAIR: The internal investigator that might be appointed as one of the two in the team—

Mr Anderson: That is correct.

The CHAIR: Would that internal investigator be appointed to investigate someone within their same district or whom they had personal knowledge of or a relationship with?

Mr Anderson: No, we would always seek to have people investigating who are not only independent but also seen to be independent. We would be expecting any investigators to declare any conflict of interest before an investigation started if they felt they could not bring an open and bias-free mind to the task they had to do. Wherever possible, we are seeking to engage people in investigations who are obviously not directly involved in the matter and have not had any close relationship with the people who are subject to the investigation.

The CHAIR: We heard a lot yesterday and in the submissions that have been lodged with the committee about concerns about delay by the CMC in the conduct and finalisation of its investigations. Yesterday we also heard from the Queensland Teachers Union. In its submission, it drew attention to concerns it has about delays within the departmental investigative processes once the matter has been handed back to the department from the CMC. Personally, I am aware of a number of cases that have, in fact, taken some considerable time. What is the department doing to match what the CMC is doing in smartening up its investigation processes to eliminate so far as humanly possible avoidable delays?

Mr Anderson: We are certainly conscious of the need to finalise matters as soon as possible in everyone's interests. There are occasions where delays are unavoidable for particular reasons, such as key witnesses to the investigation being unavailable to be interviewed or awaiting information from other authorities. But certainly we are aware of the need to complete investigations as soon as possible. We are doing our best to make sure that that occurs. Obviously, there needs to be an ongoing review of resourcing and monitoring the effectiveness of this arrangement whereby we are seeking to develop the internal capability with a select group of people to do investigations. Those people obviously have other roles such as being a principal or deputy principal of a school. If we are removing them from their functions in the school environment that can also have some effect in terms of their primary function. So it is a matter of being able to utilise the resources that we have available to us in the best and most effective way possible.

The CHAIR: Would it be fair for someone to say that appropriately enough at a district level and maybe elsewhere there is a concern to move rapidly in response to an allegation that has been raised, particularly in the child protection area, to take the appropriate action as quickly as possible vis-a-vis the teacher against whom a complaint has been made so that their contact with children is eliminated and they are in a more appropriate work setting on the one hand; and on the other hand, the conclusion of the investigation about that complaint and that teacher could seem to go on and on. Would it be a fair observation that that is how it could look?

Mr Anderson: It would certainly be correct to say that we place student protection as our paramount consideration. We certainly recognise the need to finalise matters as soon as possible in the interests of not only the person who is the subject of the allegations but also the complainant and other people who might be affected by the investigation. So it is about trying to prioritise one's activities to achieve those objectives.

Mr SHINE: You spoke about internal and external investigators. Of course, we have the CMC as well. At what stage is the CMC brought into that picture?

Mr Anderson: We would notify the CMC in relation to matters that we are obliged to forward to it. We are seeking to finalise arrangements with the CMC, I think under section 40, to enable there to be a schedule of matters which can best be described as minor incidents that do not need to be immediately referred to the CMC but then can be subsequently forwarded to the CMC on a monthly basis. The department receives a number of minor incident matters which mainly involve minor physical assaults by teachers on students, usually in the context of some dispute about behaviour management or interpersonal conflict. Those particular matters are dealt with by the department and then forwarded to the CMC in a schedule form. For other matters that are more serious and would be likely to amount to a criminal offence or are serious enough for

the person's employment to be terminated, we immediately refer that to the CMC and await its instructions about how it wishes the department to proceed.

Mr SHINE: So these internal and external investigations that you carry out are at the direction of the CMC?

Mr Anderson: That is right. For the more serious matters that need to be referred we would wait for direction from the CMC as to whether it elected to take responsibility for the matter and investigate; alternatively, if it chose to refer the matter back to us, we would proceed—

Mr SHINE: It is either one or the other?

Mr Anderson: That is correct.

Mr SHINE: There are not two investigations going on at the same time?

Mr Anderson: Not at all. We would not have parallel investigations occurring.

Mr HOBBS: You obviously try to deal with the minor issues yourself and the major ones go on to the CMC. This morning's *Courier-Mail* cited the case of Chris Murphy. It would appear on the surface that it is a $98 matter. It went to the CMC. Would that matter have been referred to the CMC directly? Was there some reason why Education Queensland did not investigate that?

Mr Anderson: We would say that we had a statutory obligation to refer that matter to the CMC; it involved a criminal offence. My understanding is that the department was obliged to refer that to the CMC and to take advice about how the CMC wished to deal with it.

Mr HOBBS: The advice that came back from the CMC was that it would deal with it; that it was not to go back to you?

Mr Anderson: I presume so. I was not directly involved in the matter. But I understand that the CMC was involved.

The CHAIR: What management systems does the department have in place to track the timeliness of your departmental investigations as to how many matters are outstanding two months, four months, six months, eight months, 12 months or longer?

Mr Anderson: We do have an ongoing review of the active files. We are constantly reviewing them to move them forward to finalisation as soon as possible. We have a schedule of what are current files at the present time and we are actively working on those continuously.

The CHAIR: So you have got consolidated statistics that you work with on a regular basis that enable if not yourself someone else to be able to look across all of the matters that are live investigations and see how many months they have taken?

Mr Anderson: The Ethical Standards Unit is relatively new in its operations. The function of the CMC liaison role has recently been transferred from one part of the department to the Ethical Standards Unit. There is still a transition going on between the two areas of the department in terms of the management of those CMC files. We would expect that transition to be completed fairly soon and the Ethical Standards Unit would be in a position to be able to list all of the active files for anyone who sought that information.

The CHAIR: Is that information presently located with the CMC liaison officer and you are foreshadowing its transfer to your unit?

Mr Anderson: That is correct.

The CHAIR: So the information is already being compiled?

Mr Anderson: That is correct.

The CHAIR: What follow-up systems do you have such that on a regular basis the length of time is being reviewed or at least being paid attention to in relation to an active investigation?

Mr Anderson: The Ethical Standards Unit conducts daily assessment meetings where the unit reviews those referrals that have been received by the unit the day before, and it is also in that context that we would be reviewing all of the active files and updating each other in terms of their progress and what needed to happen next to finalise them.

The CHAIR: How many active files would be outstanding beyond 12 months?

Mr Anderson: I could not tell you that exactly to date.

The CHAIR: Would you be happy to provide the committee with some statistics on the active files and how long they have been under investigation?

Mr Anderson: You would like the number beyond 12 months?

The CHAIR: I think the committee would be interested in the total number being investigated by the department at the moment and the age profile?

Mr Anderson: Okay.

105 **The CHAIR:** Not the individual information; I am talking about statistical information.

Mr Anderson: Sure, I understand. That can be provided to you.

The CHAIR: The committee would be interested in that information because presently the CMC has developed an excellent reporting system to the committee that indicates the situation from a timeliness point of view of all of its active files as to three months, six months, nine months, 12 months and beyond, and then they target the older matters and put special effort into cleaning them up.

Mr Anderson: Yes.

The CHAIR: One issue that I think would be of interest to the committee is this: we are talking about a devolved system where complaints of misconduct about Education employees are referred to the CMC. As the actual investigation is more and more likely now to be undertaken by Education Queensland, is the accountability of those investigations across the board diluted because it is happening at one step removed from the CMC and from our parliamentary committee?

Mr Anderson: Yes.

The CHAIR: I notice in the last annual report of Education Queensland there is reference to your new unit. There are no statistics indicating the number of investigations and their age profile or information about how you are handling the CMC job on behalf of the CMC.

Mr Anderson: Yes.

The CHAIR: Do you have any observations about how the department might address those sorts of issues?

Mr Anderson: I agree with you that there needs to be a system in place to be able to keep close scrutiny of the active complaints and their age and to be able to provide that information to any authority that requests it. I agree that there should be that provision in place and consideration should be given to including that information in the department's annual report.

The CHAIR: Does the director-general of your department receive regular advice—and if regular how regular—about the management by the department of investigations that are within its responsibility?

Mr Anderson: The director-general at the moment is advised of matters that that level of the department would have an interest in and need to know about. Certainly we would be working towards being able to provide the director-general with the type of information that we have just been discussing so that that is provided for him on a regular basis.

The CHAIR: Within your department beyond yourself, whose job is it to make sure that this Ethical Standards Unit does the CMC job inside Education Queensland on behalf of the CMC?

Mr Anderson: Ultimately it would be the Director-General of Education.

The CHAIR: Ultimately.

Mr Anderson: That is correct.

The CHAIR: But before ultimately, penultimately. In other words, whose job is it on an active basis to ensure that the Ethical Standards Unit is actually delivering?

Mr Anderson: I report to the director-general in relation to operational matters. I report to the director of strategic human resources in relation to other administrative type matters, so it would be those two people who would ultimately be responsible for oversight of the work of the Ethical Standards Unit.

The CHAIR: With regard to the relationship of the investigators to the district office—as I understand it, aside from perhaps the facilities matters, the district office is the principal management unit of Education Queensland district by district across the state. When an investigation happens, to what extent does it happen and is it appropriate that the management structure at a district level is taken into the circle of knowledge of the investigators? Does that happen as a matter of course or only on a selected basis?

Mr Anderson: I am not quite sure what the question is.

The CHAIR: When an investigation is to be undertaken by your two investigators of Mr Bloggs in district whatever, as a matter of course do the two investigators go and brief the district director such that the district director becomes a part of the investigational team?

Mr Anderson: We would conceptualise them as being part of the investigation team. We would be briefing them that an investigation is going on within their district, and they would be informed about anything that they needed to know that might affect the management of their district.

The CHAIR: Just to interrupt you, I can certainly understand the appropriateness of that in terms of the need to take fairly immediate action in some cases for very good reasons.

Mr Anderson: Yes. The district office are kept informed not only of the existence of the investigation but also if there were matters that they needed to know about during the course of the investigation and also what the outcome of the investigation was, particularly if there was identified a need for improvements in the way particular systems operated within that district.

The CHAIR: Thank you very much, Mr Anderson. We much appreciate your time.

Mr Anderson: Thank you.

The committee adjourned at 10.36 a.m.

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The committee resumed at 10.52 a.m.

NOEL PRESTON, examined:

The CHAIR: Thank you for making your time available this morning, Dr Preston. The way we have proceeded with other witnesses is to allow the witness to make a three to five minute opening address and then proceed to questions.

Dr Preston: I will highlight one or two matters that I raised in my brief submission. I will preface those remarks by underlining the fact that the thrust of my judgment and my advocacy is in the spirit of enhancing and finetuning what is basically a sound approach that the CMC is overseeing these days.

The first general point I want to emphasise is that I believe the committee should satisfy itself that the dual purposes of the CMC Act, the crime prevention function and the misconduct prevention and integrity promotion activities, are given due weight. There is always the danger that the high-profile crime prevention and high-cost crime prevention stuff might swamp the other. I urge you to satisfy yourself that the work being done by the Research and Misconduct Division is adequately resourced and in balance in the way the act envisages.

The second matter I want to highlight in my submission—and I think this point sits happily with the conversation you just had with Peter Anderson from the Education Department—is the relationship between the CMC and government departments and in particular a concern about whether the devolution process is being matched within executive government, within the departments, by an appropriate priority commitment and resourcing for ethics enhancement.

I say in my submission that I would encourage the PCMC to pursue this matter as it cannot simply review the CMC's performance. I take from both your terms of reference and the way your conversations have been proceeding that you happily accept that within this three-yearly review you potentially may speak to government as a whole about what is necessary from government as a whole if the CMC Act is to be fully implemented. It is my view, and has been since the 1994 passage of the Public Sector Ethics Act, that enhanced, clearer leadership to this end must come from the Premier's office and the Department of the Premier and Cabinet.

There are some resources allocated for ethics through the OPSME, but I am not convinced that they are sufficient, nor am I convinced that a role for central coordination, monitoring and advising on these matters is adequately mandated within the Premier's portfolio. In saying that, I am not denying that there is already a good platform laid within government, especially in that department, on which could be built a more effective edifice to support ethics and corruption prevention across government. But without further steps I think there is the risk that the current CMC program will not be matched across government in ways that will further build an ethical, corruption adverse public sector culture. I think the line of discussion you have just had with the Education Department at least identifies the need for further finetuning of their processes. It may be argued that they, as a very large department, are ahead of the game compared to a lot of other departments.

On the question of resourcing—and I did not say this in my submission—I was interested to read in Madonna King's piece in the *Courier-Mail* earlier in the week that the Premier is claiming that $300 million is spent on accountability measures across government. I am not sure how that figure is calculated. I do recall only a couple of years ago that in the parliament the Premier nominated a figure of $70 million. Obviously, we are now putting a much broader net around what is being spent. That is fine, but I think we need to be very clear about the claims of government in this regard.

My concern is that, though we might be starting to enhance risk management processes and every other avenue of compliance, the fundamental enhancing of the ethics promotion, education, culture changing stuff that I think has to be driven around the Public Sector Ethics Act and the Whistleblowers Protection Act and the CMC Act cannot be lost within this apparently rather bigger tent that is represented by the $300 million dollars. I am happy to elaborate.

The CHAIR: Thank you very much, Dr Preston. You made the point about the Premier's department or an appropriate body such as OPSME—you made some observation about that as well—playing a coordinating role. Can you elaborate on that? What level of involvement do you see would be needed at each departmental level to match that central coordinating function?

Dr Preston: I would not pretend to come here with the precise prescription. I have written elsewhere ideas about this. I am aware, for example, of the Western Australian model through its Public Sector Standards Commission. We have a lot to learn from that. It is a more centralised model which builds in systematic reviews department by department—in much the same way as the Auditor-General operates on the financial side—of ethics and corruption prevention measures. As I understand it, we are not doing that systematically in Queensland at the moment. I think it is also about a commitment at a sufficiently senior level of our departments that the leadership are taking this on as a priority and that they are interested in how the ethical standards commission, or whatever it is called within each department, is pursuing its work on a daily basis.

The decision in 1994 when the Public Sector Ethics Act was brought in was to leave each department responsible for the training and development of its code and implementation of its codes. I think that was understandable but, in a way, I think we did miss the boat. We still need more coordination and advice giving, as much as anything, so that there is a common message coming from a central body such as OPSME within the Premier's department.

I would envisage very roughly something like a capacity for advice giving on a daily basis at this central office, the capacity to encourage and advise on ongoing training and code review and a coordinating role that enhances the learning and further mutual education across government that is coming out of particular cases. I am not saying that this is not happening, but I think it is happening in a rather ad hoc and informal way.

There is a body called the Queensland Public Sector Ethics Network, just as there is organised through the CMC a network around anticorruption and misconduct prevention. That is fine and that is a good start. I speak from a little distance and not too authoritatively here that it is voluntary whether departments get into this. I think we have to move beyond that stage.

The CHAIR: Is there an argument that the lead agency role that you are putting forward is a role for the CMC?

Dr Preston: No, I really do think that, as far as executive government is concerned, it is primarily the responsibility of the Premier's department but that there has to be close coordination with the CMC. That is the way I see it. We could dream further with some of this and begin to talk about the role of the Integrity Commissioner and his office in this context, too, and his terms could be expanded to a point where he and his office are more proactive in this coordination and leadership role. I think there has to be coordination, which the CMC plays a major part in, but I really do think that if there is to be impact in government that this has to come from the very centre of the government, the Premier. Only that can give you the confidence that the devolution process that we are now committed to is matched within government in a way that the CMC can be confident that its share of the work is adequate.

107 **Mr HOBBS:** Dr Preston, what do you think the public's opinion or understanding of the CMC is?

Dr Preston: These are very leading questions. I guess I sort of move around a bit and pick up the vibe, but that is all it is. In all honesty I do think that there is a perception that is growing. I recall a very animated and detailed conversation I had only yesterday with a senior journalist around this town who was putting this point. There is a perception that the CMC is not as independent from government as it certainly was seen to be 10 years ago. I think this is only a perception. I think there is also a perception that there is this timeliness question that the investigations are not always done as efficiently and as appropriately. But I have some sympathy for the CMC in this regard, because I think that there will always be the hard cases or the easy cases for the press and others to target to highlight this, but overlook the great bulk of efficient and timely work that is being done. To be honest, Mr Hobbs, in terms of your question, at a perception level I think that there does need to be a more proactive effort made to establish the reputation of the CMC, and I think the PCMC clearly has a role in that.

Mr McNAMARA: Dr Preston, if you have a concern or the person you were speaking to had a concern that there was a view that the CMC was not as independent from government as it was 10 years ago, what would happen then in a world where the Premier's office had a greater role, as you have just outlined? Would that not accentuate that problem?

Dr Preston: I thank you for asking me that, because I can see how my earlier comments might muddy the waters from your point of view in that regard. All I am talking about there really is

in relation to the devolution of the promotion of ethics, antimisconduct measures and, to some extent, investigations. All I am talking about there is that, given that we have gone down that path, then within government we need to be sure that there is the right leadership and right resourcing going on. I think arguably that can release the CMC to be much more proactive as a fourth estate of government or a separate power. I am not talking at all about what is going on in the Premier's Department as directing the CMC—not at all. There is a clear line there. In fact, that is probably the reason I should have said to you, Mr Chair, when you asked if the CMC should be the lead agency here, that that would create that problem. Have I made myself clear enough then?

The CHAIR: Are you talking about a distinction between, on the one hand, the CMC being a lead agency regarding operational and investigative matters and, on the other hand, talking about somewhere within executive government—and you have talked about the Premier's Department—there being responsibility at a political level for the administrative wherewithal department by department for the devolution to be effective?

Dr Preston: Yes. I am really talking about how we make use of the Public Sector Ethics Act really, which I do not see as necessarily a centrepiece of the CMC's mandate but it is a centrepiece of the ethics in government mandate that I say should be led by the Premier's Department.

The CHAIR: Touching on that area again, were you suggesting in some earlier comments that you see that to some extent department by department the extent to which they embrace what has been devolved to them by the CMC under its act is somewhat voluntary, that they can choose, to some extent, the extent to which they fully—

Dr Preston: I am worried that that may be the case, yes.

The CHAIR: Is that what you meant or have I got that wrong?

Dr Preston: I am worried that that may be the case, yes.

The CHAIR: Have you seen any evidence of that in your opinion, or is it an anxiety possible for the future that you are foreshadowing?

Dr Preston: Yes, I would leave it at that.

Mr SHINE: Dr Preston, I am concerned about the perception of the lack of independence of the CMC from government from the person you were speaking to. Is it your concern as well? If it is, have you got any ideas how that perception can be changed?

Dr Preston: No, I do not have that concern. I am concerned that it is a perception. I think it is really just an ongoing matter from both the side of government and the side of the CMC of being aware of that and keeping the lines very separate and using all the avenues of public explanation. I think that unavoidably the CMC has to be in the game of constantly interpreting itself to the public. In a way, I think that is also a bit of a challenge to this committee, too, to be a public articulator of that relationship and that role.

Mr SHINE: Having the media pick up on that aspect of it can be difficult at times.

Dr Preston: Yes, I know. It is a bit of a no-win situation. I grant you that.

The CHAIR: We have thought that from time to time.

Dr Preston: You have?

The CHAIR: Do you have any observations in relation to the whistleblowers area and the whistleblowers act?

Dr Preston: Not really. I do not think that I would be suggesting this as a priority, but there probably is a time coming when there should be some systematic review of the whistleblower act and its operations and the CMC's role in that. But I am not sure where I would put that on the list of priorities at this point in time.

Mr McNAMARA: You raised some concern at the outset about the potential for the crime function to swamp the misconduct and research function. Yesterday Dr Mazerolle gave us an extensive outline of the sort of research and education that is going on at the moment. Do you think the balance is right now?

Dr Preston: I am told—you need to check this; I am not the person who can check it—that the unit that used to be known as the Corruption Prevention Division in the CJC now has fewer personnel carrying through much the same function. That would concern me.

Mr McNAMARA: Yes, that evidence was given to us.

Dr Preston: Okay.

Mr McNAMARA: But, overall, the level of production of research briefs and educational materials—

Dr Preston: Mr McNamara, I carefully framed in my submission that as an issue that I think is of prime importance and that I put to you that you need to satisfy yourself about. I am not going to make any final call on that, I am afraid.

Mr McNAMARA: Sure. Thank you.

The CHAIR: There being no further questions, thank you very much, Dr Preston. We appreciate your contribution.

Dr Preston: Thank you.

TERRY O'GORMAN, examined:

Mr O'Gorman: I have prepared some brief points if I could just mention them.

The CHAIR: Certainly.

Mr O'Gorman: Firstly, I see that the Police Commissioner yesterday made some comments about tape-recording from point of first contact. Could I urge this committee to the extent that it is within your remit to seriously examine this as, in my view, a vital necessity. I heard the commissioner's comments that it would be resource impossible. I challenge that. My experience is that police regularly, when it suits them, tape-record from point of first contact—when it suits them. Most police have either bought their own or use Police Service issue. The reason why I think it is vital for tape-recording from point of first contact is that it is now 10 years on since mandatory tape-recording of interviews at police stations was introduced.

My experience as a criminal defence lawyer and the experience of many others is that the verbal is creeping back in, but it is very difficult to convince a court on a case-by-case basis that that has occurred. The reason it is difficult to convince a court is that at the end of a police interview one of the questions that the police are obliged to ask is, 'Has any threat or inducement been held out to you?' If a person says on tape, 'No,' then it is very difficult, perhaps in some independent evidence, to convince a court that that has occurred and to convince a court to exclude the interview. I am concerned that there is growing, at least anecdotal, evidence and I consider that the CMC should look at this, and I will return to this briefly when I talk about the research function of the CMC. But I think it is important that the issue of tape-recording from point of first contact be seriously examined. The verbal was largely but not completely eliminated by mandatory tape-recording of interviews at police stations, but there is an increasing body of at least anecdotal evidence that some police—what I would describe as a significant minority—are getting back to their bad old habits of applying pressure, making promises and giving inducements before the police station tape-recorder is turned on.

108 If I could refer to some matters arising from the CMC's submission, the CMC at page 11 refers to the discussion paper on cross-border investigation. I urge this committee to seriously consider making it an absolute precondition of Queensland entering into a uniform national body of cross-border police powers that the Public Interest Monitor be a central aspect of that. The Public Interest Monitor, as members would recall, was introduced by the Borbidge conservative government. In my view it has fulfilled a vital role in ensuring that judges are not just rubber stamps for law enforcers when they are seeking listening devices.

It has been reported to me by some barristers, who are closer to judges than I am—barristers are closer to judges than solicitors are—that in fact many judges are grateful for the opportunity to have the Public Interest Monitor present when a listening device is sought because many judges held the view, as it is reported to me, that they felt uneasy at simply being asked to issue listening device warrants where the only argument that was put forward and the only people present were the police or the law enforcement agency and the relevant lawyers. I urge that the Public Interest Monitor has served a very important function. It was a very important initiative and it must form part of any national participation in cross-border standardisation of police powers.

There was a reference also at page 11 to the aspect of assumed identities in relation to the proposed national cross-border police powers. My submission is that—and there seems to be an increasing trend in this regard—where people are giving evidence under assumed identities, in effect, being put before a court as being someone who they are not, it is critical that there be some procedure in place where the defence is provided as a matter of course with any transcripts of any other related court case where there has been criticism of that person's activities in a particular covert investigation.

To state the obvious—and this was notorious during the bad old days pre-Fitzgerald—if a particular police officer had a reputation for verballing you could, amongst a network of defence lawyers, get a transcript of where that particular police officer had been caught out. But with this increasing trend of people giving evidence under assumed identities, unless there is some obligatory disclosure regime to the defence where a person has been previously criticised in a related case, then a person can give either false or misleading evidence or can engage in a course of conduct for which that person is criticised in one case and yet that course of conduct can be denied by way of knowledge to the defence in a related case.

We would support the proposal at page 13 to widen the definition of a unit of public administration. With the increasing privatisation of government functions we would consider that that is a sensible move. In relation to this covert search business, it is in our view totally preposterous that the CMC be given a power to covert search without a warrant. If you look at the history of the covert search power, it was introduced only a short time ago and it was introduced primarily to do with drugs. The concept was that if, say, there was a factory in the Valley that was under investigation for a possible amphetamine manufacture site, the police could go in, take a sample of powder and match it up later on when the arrest was made. Typically with such a power it was said that it would only be used in the most extreme circumstances and now we see, as is typical with all police powers, the inevitable function creep.

I just cannot conceive of a legitimate situation where the CMC would need in any area, including so-called terrorism, to have to do a covert search where there was not an opportunity for a warrant to be obtained. The concern I have is that, if you allow covert searches without a prior judicial warrant, then the protection that flows from a warrant just simply is not there. I was not here yesterday to listen to Mr Butler or the Police Commissioner's factual arguments in support of the proposal, but I cannot see that it is justified, and I urge this committee to look with great wariness at the desirability of it.

While I know you are not here to look at the raft of antiterrorism laws that have been brought in, principally federally, I invite you to look at what is happening in relation to the national cross-border standardisation of police powers. We have the Senate about to pass a bill that will allow detention for seven days not just of a person who might have information about an imminent terrorist threat but of a person who might have information about anything that has occurred in the past, even if it has not been a terrorist incident if it has some terrorist connection—even financing of a terrorist organisation. Now you have a proposal to have covert searches without warrant. Civil liberties has to be factored into the equation. In my submission, civil liberties is getting a very hard hearing in this country at the moment because as soon as the word 'terrorism' is mentioned everyone puts their hand up for greater powers.

There is argument at pages 17 to 19 for telephone interception. Our position I think is reasonably well known. We argue that in areas where telephone interception is needed, in most cases that can be achieved by joint operations with federal law enforcement agencies. But if telephone interception is to be introduced—and I see the CMC have made a mighty pitch in their submission over many pages for it—again, it should only be introduced if there is a role for the Public Interest Monitor. So far the federal government has steadfastly refused to even countenance the role of a public interest monitor. The importance of the role of a public interest monitor in relation to telephone tapping is, in effect, to watch what is happening during the warrant when the warrant is put into effect after the judge issues the warrant. The judge's role, in a practical sense, is limited to issuing the warrant and then the law enforcement agency goes away and executes it.

I cannot see any legitimate argument against the involvement of the Public Interest Monitor in telephone interception and, indeed, there are many advantages. The principal one is that it will allow the Public Interest Monitor—as he does very well on reports that I get—in relation to listening devices to put a public interest argument up before the judge as to whether in fact a telephone interception warrant is justified. But more importantly, it allows the Public Interest Monitor, once a warrant is issued, to in fact examine the product of the warrant over the period of 30 or 60 days that it is in existence. So if, for instance, there is 99 per cent private but non-criminal information being captured and little or no criminal intelligence being gathered, contrary to what the law enforcement agency said in the affidavit to the judge, namely, 'We need it because we are confident we will get criminal intelligence,' then if the Public Interest Monitor is in fact monitoring the extent of the product during the life of the warrant, the monitor has the ability to, for instance, call a halt to it or bring the matter back to court before the expiration of the 30 or 60 days and say, 'What you were told is not turning out to be the case.' Telephone interception is obviously extremely invasive and if there is a tried and true model that has worked in listening devices, there is no practical reason why it should not work in telephone interception, and there are strong civil liberties and procedural reasons why it should occur in telephone interception.

The CMC talk about Project Resolve over a number of pages—pages 37, 44, 57, 63 and 64. Project Resolve is the mechanism by which most complaints other than the most serious complaints against police are handed back to the police to investigate. I note what the CMC say

about Project Resolve and the ongoing supervision. I must say I have some reservations, based partly on one experience I had where a complaint was made by me in relation to some what I alleged to be police misbehaviour in effect excluding me from access to a client. The police in that case just simply went to the client and then said to me, 'The client does not have a complaint.' It was my complaint, not the client's. The client supported the factual basis of it. They came back and said, 'The client doesn't support it. We are closing the book.' That is one example, one experience. I think it defies logic to say it is isolated. Fortunately, when I wrote to the CMC and said, 'Can you stop this nonsense?' they did. But my concern is to what extent—and I would be interested to hear when Mr Butler presents his concluding remarks—is there actual and fairly detailed spot auditing of the processes that are put into effect in relation to investigating particular complaints to see whether my example is common. I suspect it is.

In relation to witness protection, there is an argument at pages 80, 81 and 82 that the chairman be able to, in effect, drop a person from the witness protection program. If I am right, I understand that judicial review does not apply to witness protection. If I am wrong, then disregard the following comment. I have some reservation if judicial review does not apply to the witness protection program and the dropping of a person from it. I have a concern that there should be some mechanism where a person who is dropped from the program ought to be able to properly appeal. There is a proposal, as I understand it, by the CMC to prevent any public comment about the witness protection program itself. That concerns me because occasional articles appear in the press that enlighten us as to some of the things that are said to go on in witness protection programs.

There was an article in the *Sunday Mail* about two months ago where a particular fellow complained that he had been badly done by—and this was in relation to the federal witness protection program. I would urge some caution in adopting the recommendation of the CMC, as I understand it, which argues for a prohibition of public discussion of the details of the witness protection program. I think it is important when such a program exists—I accept that it must exist largely in conditions of secrecy—that it is able to be open to public scrutiny when the opportunity presents itself.

109 I have two final comments. I note that section 52(1)(c) of the CMC Act permits research into criminal justice matters to be done, but only on a reference from the minister. I would be interested to know—I cannot see anything in the CMC's submission—whether there has been any reference by the minister. You might remember that when that particular provision was inserted there was a fair bit of criticism of it in that the previous research division of the CJC fulfilled very well the role that it was intended for by Fitzgerald. Fitzgerald made the quite apt observation that if research into law and order issues is embedded in the relevant departments—Police and Justice—then the government of the day has control of the data and control of the research and is therefore able to politicise issues at its will.

If you remember the very sound work done by the research division when it had an opportunity to do research on any issue of criminal justice without reference to the minister, it stood on the toes of the government of the day—and a good thing that was. My recollection is that it did some research into cannabis that attracted some ire of the government. It did some research into prostitution which was controversial. But I think it is critical, particularly if you look at the success of the similar office that Dr Weatherburn operates in New South Wales, that research into criminal justice issues be separate from the government of the day. Otherwise, it just means that debate and issues about what, in fact, is going on in the criminal justice area are able to be controlled by the minister through the department.

Finally, I conclude with one issue arising from the Queensland Police Union's submission. It argues for judicial monitoring of the CMC in relation to the use of its coercive powers, particularly in relation to investigative hearings. We support that. My recollection of the Fitzgerald report is that it was intended that where an investigative hearing was to be conducted it was to be conducted after a Supreme Court judge had heard the argument and had approved it. I consider that there is some scope for revisiting that recommendation. To that extent, we support what the Queensland Police Union says in its submission. Those are the prepared comments.

The CHAIR: Thank you, Mr O'Gorman. I take you back to comments about telephone interception. In relation to your knowledge of other states that operate telephone interception

powers through the federal legislation, to what extent are civil liberties issues or concerns in those states addressed and how effective are they?

Mr O'Gorman: I practise a reasonable amount in New South Wales, where telephone tapping exists. I have practised obviously in the area where federal law enforcement agencies use it. The answer is that civil liberties concerns are not addressed at all. Look at the practical obstacles that exist to, in fact, challenging whether telephone tapping was done properly or whether there was any deficiency in the way the warrant was obtained. If you seek to do that, you subpoena relevant material from the law enforcement agency and the affidavits that were put before the judge to issue the warrant. Frequently you are met with public interest immunity arguments, namely, 'You can't look at that because it contains police methodology,' or, 'We won't produce this affidavit because it contains information from an informant.' Simply put, the civil liberties concerns are not addressed, and they cannot be addressed on a case-by-case basis, largely because of the relative ease with which law enforcers are able to win public interest immunity arguments.

Mr McNAMARA: How would you respond to the suggestion that increased powers, like surveillance warrants or telephone interception, could be seen as an attempt to protect the human rights of people who catch planes or the civil liberties of people who work in tall buildings? Where do you see those civil liberties and human rights arguments factoring in? Is it always at the level of the individual or can there be a civil liberties argument that these are, in fact, enhancements of civil liberties?

Mr O'Gorman: I would answer that by saying that the civil liberties councils in Australia largely supported the first package of antiterrorism laws that went through the federal parliament in June of last year. We do not see civil liberties as simply being one sided, but I am concerned that the balance in the name of fighting terrorism is being seriously skewed. To answer your question succinctly, it is not one-sided but unfortunately I think it is becoming one-sided against the interests of civil liberties.

Mr McNAMARA: Could we come to a balance where the Public Interest Monitor effectively had that role in telephone interception that you suggested? The PIM yesterday gave fairly blunt evidence to this committee that he was in favour of such a role and such powers. Could you accept that as an outcome?

Mr O'Gorman: I think if telephone interception powers were to be introduced at state level there must be a role for the PIM. I acknowledge the arguments put up in support of it. I disagree with it. I recognise that there are arguments that run counter to ours, but I think if there is to be telephone interception there must be a role for the PIM. Otherwise, there is simply no mechanism to ensure that when a warrant is issued and put into practice it in fact is being done properly. At the moment, from what I can see in relation to telephone interception warrants federally, there really is not any effective means, when a judge is asked to renew a warrant, of seeing whether the information that has been given to the judge as to the extent of criminal intelligence is accurate. Simply put, if telephone interception is to come in it is our submission that it must be with a PIM role.

Mr FLYNN: Earlier you mentioned a concern that there was a difficulty in identifying officers whose evidence, shall we say, was criticised and that when we have police officers giving evidence today there is no way of doing that when they give evidence under assumed identities. That was mentioned yesterday. Could I perhaps suggest to you that, given the average age of officers in the service today and the control measures that have been put into place since Fitzgerald and given the types of investigations and the calibre of the professional qualifications of officers involved, the integrity of officers is somewhat higher today than once perhaps was the case? Can you demonstrate that there are a significant number of cases where you suspect that officers giving evidence have been criticised beforehand? It would require some considerable resources to put in the checks and balances that you want. What is your evidence to suggest that that is occurring today—that we are getting officers giving suspect evidence who have done so before under a false identity?

Mr O'Gorman: I will answer that in two parts. I am talking about assumed identities not only in relation to police but also in relation to citizens who give evidence under assumed identities. The proposal is that not only police be able to give evidence under assumed identities

but also citizens give evidence under assumed identities. What evidence do I have? None. There is a major article in the current edition of the criminal law journal which argues this very issue.

In relation to covert policing, police are doing undercover work under pseudonyms where they are not required to tape-record. They selectively tape-record. I accept that they selectively tape-record sometimes necessarily, because it can be dangerous sometimes to tape-record. They give evidence of incriminating conversations that they have had with targets. It is a field that is ripe in respect of the officer who wants to lie to lie and not be able to be found out.

The whole area of covert policing, unlike overt policing, is largely unregulated. All of the problems that you had in the 1960s and 1970s, revealed in the Lucas inquiry in 1977 and the Fitzgerald inquiry in 1987, with overt policing—of notebooks being bodgied, et cetera—are now problems with covert policing. My argument is that you do not wait until the examples multiply. If there is the potential—talk to many criminal law practitioners and anecdotally they will express the same concern—for a covert police operative to lie, the resource implications of requiring allegations that were made by defence lawyer 1 in case 1 to be passed on to defence lawyer 3 in case 3 are not massive at all.

I remind you that a similar recommendation to that effect was made by the Lucas inquiry in 1977. It was recommended by Judge Lucas—Des Sturgess sat with him—that a prosecutor be required in all cases where there were allegations against a police officer in cross-examination to simply do a memo of it and report it to a central body, be it DPP him or herself or the Police Commissioner's office, or now the CMC. So it is not, with respect, a big resource issue. Covert policing is largely unregulated. Overt policing is mostly under control.

Mr FLYNN: It is a matter of very deep concern when you mention that there is anecdotal evidence of police verballing coming back in. Those of us here all remember the pre Fitzgerald days. Things had to be done. But it is a primary charter of the CMC to take that on board. Indeed, that fulfilled a majority of the work. It is anecdotal. Are you able to offer us any more than that, other than the fact that you have heard these things? What research is the council doing to firm up these anecdotal stories?

Mr O'Gorman: It is very difficult for us to do the research because, one, we do not have the resources and, two—

Mr FLYNN: In conjunction, perhaps, with the CMC.

Mr O'Gorman: I would suggest that a starting point with the CMC would simply be to require of all prosecutors to advise the CMC in all cases where judges excluded a record of interview or in all cases where there were allegations made. I accept that the allegations are not always correct. The CMC should require all prosecutors to provide a one- or two-page memo in every case where that happens, particularly in the higher courts. It would not be resource intensive. It would be a 10-minute memo that the prosecutor would have to dictate at the end of the case. But it was the failure to collate those sorts of examples in the 1960s, 1970s and 1980s that led to the serious problem, the institutional problem, of lying and verballing that was tried to be addressed by Lucas and was only addressed by the government after Fitzgerald.

I have heard anecdotally that there are an increasing number—relative to, say, five or eight years ago—of records of interview being excluded by judges in the District and Supreme courts, but I cannot get my hands on that information. I would have thought the CMC could. I think if it is addressed now it would not be heavily resource intensive. It means that whatever the problems are can be fixed up now rather than become serious problems that would require a further royal commission.

You gentlemen have all been around long enough to know of the phenomenon that is principally attributed to the Mollen royal commission into police in New York. It is said by those who study police royal commissions that generally a decade or so after a major royal commission into police problems start to re-emerge. My concern is that the verbal is. I am not saying it is of massive proportions, but it is of worrying proportions.

110 **The CHAIR:** Can I just take you to a couple of areas where the CMC has put forward proposals for the expansion of powers argued on the basis of their necessity in relation to terrorism. One is surveillance device warrants being available for locations or places where it is not actually possible to identify a named individual, and the other is an expansion of the definition of 'serious indictable offences' to include circumstances where only extensive destruction of property

takes place. Both are argued for in broad terms on the basis of equipping the CMC and the QPS to address the now present-day concern about terrorism. Could you give us perhaps at a level of some detail your observations about those two specific proposals and your views about whether for terrorism alone or whether for all criminal matters those two changes should be made?

Mr O'Gorman: Those proposals are mentioned on page 14. We would contingently support both of those. We think that they make sense. To state the obvious, there is always a reaction against seeing police powers increased because of the potential for abuse. But that said, our view is that those two proposals are well argued and we would think, subject to thinking through the problems in a bit more detail, that in principle we would support them.

The CHAIR: Is there a distinction that can be drawn between perceived risks of terrorist activities on the one hand and any criminal activity on the other? Is there a case for the expansion of the two related powers in the case of terrorism, but maybe the argument is not so strong in relation to general criminal activity?

Mr O'Gorman: I would have serious reservations about the proposed power for surveillance of places rather than individuals in relation to ordinary criminal offences. I think the civil liberties balance, in my submission, should be struck in favour of the civil liberties side of the law and order equation for ordinary criminal offences. But in relation to terrorism, we can see that there have to be some increases in police powers to deal with terrorism. We think the case is made out in relation to surveillance of places for terrorism.

But when you look at the concept of surveillance of places for ordinary criminal offences, when you look at the current powers available to police, they have dedicated covert surveillance squads. They can put in place lots of police methodology. My contention is—and this is a contention that was the centrepiece of the CJC's report dealing with police powers that led to the Police Powers and Responsibilities Act—that there is a heavy onus on those who argue for increased police powers to put forward factual situations in order to demonstrate that they are needed. I cannot see—absent some factual situations that the CMC would be cross-examined on—that there is any case at all, if you look at the balance between police powers and civil liberties, for surveillance of places in relation to criminal activities. I concede that in relation to terrorism it may be justified.

Mr SHINE: I think yesterday it was said on behalf of the CMC that there was no suggestion of any actions which would suggest that there has been verballing with respect to tape-recordings. I think something similar to that was said. That is contrary to what you have heard. I think you also made suggestions that there have already been directions excluding certain taped evidence on that basis. Could you give us some examples of how that verballing occurred with respect to the tape-recordings—the mechanics of it? If that is the way it has occurred, how would the introduction of tape-recording from the point of first contact, which you have argued for, prevent that in some way?

Mr O'Gorman: One case comes to mind where the person eventually pleaded guilty. His instructions to me were that he asked to contact a solicitor when his house was raided and he was prohibited from doing so. The PPRA makes it clear that you do have a right to contact a solicitor. In that situation, if there had been a requirement of mandatory tape-recording from point of first contact, namely, at the raid, that issue would be quite easily put to bed. The tape would show whether my instructions were right or wrong.

But I am increasingly getting complaints from people that they are being denied their right to contact a lawyer sometimes for up to two hours. I accept that, of course, your instructions statistically cannot always 100 per cent of the time be correct. But from talking to other criminal lawyers, my experience is common to most criminal solicitors who do high-volume police station work or high-volume criminal defence work. In terms of the CMC not getting any complaints about it, it was pretty well recognised by Fitzgerald, Wood and now by Kennedy in WA that a lot of misbehaviour can happen without complaints being made. In the particular case that I referred you to I urged my client to let me complain. He said that he did not want to. He felt there was a risk of victimisation. I would have felt the way to get some hard evidence as to whether my anecdotal experience and that of other criminal defence solicitors is accurate is simply to require prosecutors to do this memo that I have argued for.

I would have thought the CMC could talk to some judges and ask, 'To what extent have you excluded records of interview over the last 12 months because of off-tape misbehaviour?'

The fact is that it is my experience that police frequently tape-record from point of first contact when it suits them. But you get the typical explanations: 'The tape-recorder failed. The batteries fell out. It fell out of the car.' They are all nonsense. They are the sorts of furphies that were put up when police station mandatory tape-recording was mooted. It was then said that police would never get confessions because everyone would get stage fright. That has not happened.

Mr HOBBS: We had discussed a few of the recommendations by the CMC for increased powers due to the threat of terrorism. In view of the federal legislation that is going through now, is there more of a role for the Federal Police to handle this area? Obviously the state has to be involved in case an issue arises. Should the federal authorities be the lead agency for concentrating on terrorism rather than the states?

Mr O'Gorman: I think the simple answer to that is yes. I have seen a convincing enough argument that there probably should be some complementary terrorism powers enacted at state level, but the lead must, and indeed has, come federally. If you actually go and look at the considerable powers that were given to ASIO and law enforcement agencies in the first package, they were fairly significant. I urge a note of caution that it is in the nature of law enforcers—and I do not say this derogatorily—to want more power. The concern that I have is that we do not give more power in the name of terrorism without rigorously analysing whether that power is needed. The starting point is: give us examples and subject them to rigorous scrutiny. If the examples are not put up or they do not stand up to scrutiny, the extra power should not be given.

Mr FLYNN: With respect to tapes, I think you have made your argument—and a persuasive argument. However, I feel sure that you must be referring to planned instances where you are going to have an interaction between police and a member of the public. Therefore, they can go in with a tape-recorder, have it ready and be able to record proceedings from first contact. That is a valid argument. However, I am sure the police can make an equal case of saying that there is a large proportion of events that is not planned. It is not always convenient to have a tape-recorder ready. Yet there may be a considerable amount of evidence both in sound effect and speech that might be precluded if we put into place your argument for excluding any evidence that is not on tape. Can you see the difference between the two fields of operation and the fact that there may be a case for not having some evidence on tape?

Mr O'Gorman: I would argue that if evidence is not taped it should not be permitted to be led. I acknowledge that there is a contrary argument. But if I understand your question correctly, yes, I acknowledge that in some circumstances it may not be possible for the police to tape-record from the point of first contact. I would not have thought, though, that it would be very many. My experience in cross-examining police is that they mostly have in the car a tape-recorder and in most instances they are able to tape. I accept that there would be some situations of emergency where that may not be possible. I would not have thought from the sorts of answers that I have got in cross-examination over the last 10 years that they would be many.

I have seen so many instances, even frequently in emergency situations, where the police have tape-recorded from the point of first contact, and it is sometimes absolutely deadly for an accused. He or she can say what they like to you as a lawyer; if it is on the tape from the point of first contact, you say, 'How are you going to get around that?' But the arguments put against tape-recording from the point of first contact are the same arguments, say, that the Police Union put up to Lucas and the arguments put up to Fitzgerald. They are the same arguments, namely, this will require a huge amount of resources and is not practical. The reality is—and I am confident that I cannot be factually challenged on this because I have cross-examined so many police over the years—that a large number, the overwhelming percentage, of police when it suits them carry tape-recorders from point of first contact.

The CHAIR: Thank you very much, Mr O'Gorman. We appreciate your time.

111 **GARY WILKINSON,** examined:

The CHAIR: Thank you for coming this morning, Mr Wilkinson.

Mr Wilkinson: Thank you for inviting me.

The CHAIR: The way we have proceeded is to invite each witness to make a brief opening statement and then for us to discuss issues that you raise, or have already raised, by question and answer, if you are happy to go that way.

Mr Wilkinson: Certainly. You have our submission, of course, and I have your response and the issues that the committee wishes to deal with. I think that the main points in the union's submission, particularly when it comes to delays in finalising the investigation, are really our major concern and have been since the beginning of the original CJC.

We know that the investigation can be finalised by the investigators quite quickly in most cases, but then the report must go to the overviewing solicitor at the CMC, and that is usually where the delay comes from. Often, of course, it is forwarded on to the DPP and it is delayed further at that end. It is our view that the process could be considerably speeded up if perhaps the investigators were given the discretion to decide whether a charge of any description should or should not be referred against the police officer. Police officers do that as a matter of course in the everyday execution of their duty.

When you have an inspector of police working at the CMC, surely they are experienced enough and senior enough to make that decision without having to refer it on to a lawyer to overview it and then further refer it to the DPP to make a decision on criminal charges. We do not do that when we are out on the street arresting people for various offences from murder down. We have to make the decision ourselves, and I believe if that were placed in the hands of the investigating officers, the inspectors of police and what-have-you that work the CMC, that would expedite the process and thereby eliminate nearly every complaint we do have with the CMC.

That is our major issue. The other matters here that we have detailed really are a matter for the committee, for their decision on which way they choose to view it. But generally since Mr Butler has been chair of the CMC, or the CJC before it, it has improved remarkably and our complaints about its operation have diminished considerably.

The CHAIR: Thank you. Can I take you then to the issue of delay that you raise, focusing firstly on the QPS, because we are now operating in a system where the vast majority of investigations or incidents notified to the CMC are devolved back to the QPS to investigate directly themselves with the oversight of the CMC, et cetera. Do you have any observations or comments about the processes for investigation by the Ethical Standards Command or the time lines or questions of delay within the QPS, particularly the Ethical Standards Command?

Mr Wilkinson: There is some delay, usually not as great as it tends to be at the CMC, but in a lot of instances they do have to refer the matters back to the CMC.

The CHAIR: If I could interrupt you there, that is at the conclusion of their investigation. You are talking about referring back to the CMC at the conclusion of their investigation.

Mr Wilkinson: If those are the instructions of the CMC when they forward it on, they must forward it back to them for overview or what-have-you. But generally it works reasonably well. With the Ethical Standards Command, generally the delays are minimal at that end. We can only point to the delays where it ends up on the desk of probably an overworked lawyer at the CMC and it can sit there for months. We have had minor matters that have lain on somebody's desk at the CMC for up to three years recently, and to us that is unacceptable. We are not talking about serious criminal charges; we are talking about misconduct. That holds up an officer's career. It prevents them from being promoted. It prevents them from relieving at higher rank. It prevents them from being transferred, and for such really minor matters it is unacceptable in our view.

The CHAIR: In the illustration you give, are you talking about conduct that did not in any way amount to a criminal offence?

Mr Wilkinson: Yes, and matters that, when they are finalised, amount to nothing more than a reprimand or perhaps a fine and even at worst sometimes a disrating. We are not talking about issues that can cost an officer their job or cost them even their freedom if they are charged criminally. If an officer commits a criminal offence, the investigation will determine that. Then it is

our view that if that is so, then the police who are doing the investigation should prefer the charges immediately and get it over and done with.

The CHAIR: One of the ways in which the CMC is moving to monitor the investigations undertaken by the QPS is on the basis of reporting outcomes back to the CMC rather than referring the outcome of an investigation back to the CMC and then waiting upon a decision. Instead the QPS will undertake the investigation, conclude the investigation and choose upon a course of action and report that outcome back to the CMC. Do you see that that approach would actually help overcome some of the delay problems of the past?

Mr Wilkinson: Yes, it will. I have no problem with the CMC overviewing the actions of the QPS in any aspect. Once Ethical Standards have dealt with the matter, they could forward it on to the CMC, of course, for their overview of it, but let us deal with the matter and get it over and done with. If there has been some mistake or some misconduct on the part of the investigator, they will uncover that and they will deal with it. But we should not hold up the process until they have ticked off on it, so to speak. It has to be dealt with expeditiously so that an officer can get on with their career, and if it is so serious that it is going to end their career, then get it over and done with quickly.

The CHAIR: After an officer becomes the subject of a complaint, do you have any observations about the quality of communication to the subject officer about the progress of the investigation so that they actually have some sense of time as to when it might conclude?

Mr Wilkinson: There is usually none. Nearly every police officer that is investigated by the CMC comes to the union for assistance and we provide them with lawyers. Our lawyers often are in contact with the CMC lawyers to find out where the investigation is, when it will be finalised. There is never an answer; it is usually 'When we get around to it'. Now, it is more than likely that the people at the CMC have a huge workload and cannot wade their way through it, I suppose. That is my assumption. I do not believe that they are lazy, but really there is no feedback at all. I say again that the only way to get around it is to allow the investigating police, who are senior police officers in charge of an investigation, to do it and allow them to make the decisions and get on with it.

Mr COPELAND: Mr Wilkinson, you say in your submission that you would be happy to provide the committee with a number of examples of those delays, especially the very long delays of one to three years. It would be very much appreciated if you could forward some of those to us after the hearings.

Mr Wilkinson: Certainly. That is no problem at all.

Mr SHINE: Mr Wilkinson, we heard yesterday, and just recently from Mr O'Gorman, about the pros and cons of tape-recording from the point of view of the first contact on. What are your views on that?

Mr Wilkinson: Look, it does not bother me in the least if you want to give every police officer a tape-recorder and say, 'You'll tape every interview or every aspect of the investigation from the beginning', but I share the commissioner's view that that is a very expensive exercise. I would have thought that the estimated cost of $30 million could be better spent in resourcing the police force properly or the Police Service properly.

But the comments made by Mr O'Gorman in relation to where instances are not tape-recorded—my experience is that, if the only evidence available to a court is an unsubstantiated confession without a tape-recording or anything else, that does not really get past first base unless there is some other evidence to substantiate it. Once again, I am not going to argue the pros and cons of whether we should or should not have them; it does not concern us. If a police officer is given a tape-recorder and told, 'Every time you talk to somebody turn it on', they will do it. It does not really matter. But I think it is a very expensive exercise for little gain, if any.

Mr SHINE: Do you make any comment about his comment that tape-recorders are used from the point of first contact when it suits the police officer?

Mr Anderson: A lot of police officers buy their own tape-recorders for expediency and for their own protection against unfounded allegations, but when the first tape-recorder wears out many police officers tend to say, 'Well, I can't justify the cost of it and if they're not going to supply it I'm not going to buy another one'. It is not so much a matter of whether it suits their purpose or not; it is a matter of whether they bother putting their hand in their pocket and buying their own.

Mr HOBBS: Would it be a situation where they would not actually have to log every tape-recording? Would it be a case of a needs basis? If there was a situation where an issue was going to court, then obviously the recording would have be dictated or whatever the case may be. I am just wondering about the workload there. Do you think you would have to have every recording documented or—

Mr Wilkinson: In the initial stages you would because you do not know for some time whether the matter is going to go to court, so you are going to need some kind of record of it until that is finalised. Nowadays, with the introduction of digital recorders, I suppose you have to download everything on to a computer, and the police computer system would not cope with that. It falls apart all the time anyway.

Mr McNAMARA: Mr Wilkinson, in your submission the union suggests that the Parliamentary Commissioner should have an own motion power to investigate matters other than matters referred to him currently by this committee. I was wondering if you would elaborate on that, as to why you think that is necessary. What is the concern there that drives a suggestion that that would give greater accountability?

Mr Wilkinson: Simply because for the Parliamentary Commissioner to sit and wait for matters to be referred to him—matters may not be referred to the Parliamentary Commissioner for whatever reason. It may not come to the notice of this committee, for example, but if the Parliamentary Commissioner is aware of it, then we just believe that that individual should have the power to make the investigations quickly and proceed along those lines. It is not something that we will die in the gutter over; it is just a matter that we think is appropriate, and it would probably expedite a lot of issues if that were the case.

The CHAIR: From a practical point of view, if the Parliamentary Commissioner became aware of a matter that he thought ought to be drawn to the attention of the committee, in a practical way would your concerns be addressed if in fact the Parliamentary Commissioner took it upon himself to notify the committee of something that he has become aware of, drawing it to the attention of committee so that in fact the committee could turn its mind to what further action might need to be taken?

Mr Wilkinson: I believe that that should be a matter of course anyway. Even if you gave that power to the Parliamentary Commissioner, I would assume that if he or she embarked upon an investigation they should notify you as a matter of course.

The CHAIR: Presently there is no power for the Parliamentary Commissioner to embark upon an investigation without a reference from the committee.

Mr Wilkinson: Yes.

The CHAIR: But I am just suggesting that from a practical point of view of ensuring that the committee is alert to all complaints that might warrant investigation, if the Parliamentary Commissioner made a point of notifying us of something that he or she became aware of in case we were not also aware of it, would that in effect solve the concerns you have?

112 **Mr Wilkinson:** Yes, I guess so. If it is brought to the committee's attention—and provided the committee did not say, 'Thank you very much,' and file it in a drawer—then what you are saying is that if the Parliamentary Commissioner became concerned about something and wanted to proceed with an investigation, then he would refer it to the committee to get approval, is that right?

The CHAIR: I suppose there would be nothing stopping the Parliamentary Commissioner inviting the committee to consider approving a reference to him or her to undertake an inquiry.

Mr Wilkinson: That may help. That could be the case now. I suppose there would be nothing preventing the commission from doing it now.

The CHAIR: There is nothing at a practical level stopping that happening now.

Mr HOBBS: The QPS are getting an increased number of complaints that are referred back from the CMC. Does the QPS have the resources to handle those cases quickly?

Mr Wilkinson: They do. The Ethical Standards Command has been boosted considerably, probably to the detriment of other areas. It has the resources. Whenever an incident occurs, whether it be a shooting or a serious road accident or anything else that needs to be investigated, they are there and they do it reasonably efficiently. In our view, their resources

are quite sufficient. The only hold up from our perspective when investigations are being undertaken generally is at the CMC end or the DPP when it lands on a lawyer's desk. I am not being overly critical of lawyers, but that is where it slows down. That is what holds it up, for whatever reason.

Mr COPELAND: In your submission you also argue for the abolition of the role of general counsel within the CMC. Would you expand on that?

Mr Wilkinson: Only from the point of view that we believe that that position ought not be governed by the CMC. It should be an independent position. They should simply choose somebody from the Bar to perform the role when necessary. It is the same argument as review commissioners dealing with police officers. We believe it would serve the purpose to say that everybody is independent and not governed by the CMC whim.

The CHAIR: The Crown Solicitor and the Crown Solicitor's Office operates, as I understand it, within the departmental structure of the Attorney-General and Justice yet it is expected of that office that independent, objective legal advice be given to the executive government on any issue put before it. Surely the Office of General Counsel in the CMC can perform with that same level of objectivity, independence and legal rigour?

Mr Wilkinson: One would expect so, but it does not appear on the surface to be transparent in that regard. We have had instances in the past where investigative hearings were being conducted probably on the advice of the individual concerned. Perhaps independent legal advice would not have gone down that track. We think sometimes that because of the mind-set of some of the lawyers at the CMC and the function of the CMC it gets a bit clouded and they do not look at it independently—not because of any act of bias on their part; it is just the way they function.

The CHAIR: Are you saying that they are too close to the organisation?

Mr Wilkinson: That is my view and that is the union's view.

The CHAIR: I would have thought that the decision whether or not to conduct an investigative hearing would be exercised at an investigative or policy level acting on advice rather than it being a legal decision. I would have thought that the Office of General Counsel would advise about the legal situation regarding whether or not to conduct an investigative hearing, but that the decision whether or not to conduct the investigative hearing would be made by somebody else. Is that not your experience of how it works?

Mr Wilkinson: I think it is the way it works. Mr Butler is probably in a better position to answer questions about the internal machinations of his organisation. I have experience of advice given to conduct investigative hearings over such minor matters that, in the end, resulted in a minor slap on the wrist. It has occurred and it does occur because of the advice given by these individuals. I am sure that if someone at the Bar were giving the advice they would say not to bother, to have an investigation and get it over with.

Mr McNAMARA: Is your objection with the position of general counsel or particularly people?

Mr Wilkinson: The position.

Mr McNAMARA: You were talking about advice given by individuals.

Mr Wilkinson: I am not criticising the integrity of the individuals. I believe they are too close to the organisation. We have had the same one for a long time. But they are probably too close to the organisation, been involved in it for too long that they live and breathe it and think the way the organisation thinks instead of using an independent mind. I think an independent mind probably would suit the purpose of the whole structure of the organisation better.

The CHAIR: Thank you very much Mr Wilkinson. We appreciate the time you have made available to us. Mr Butler, we are now at the conclusion of our hearing and the time to hear from you. There are a couple of commissioners here so I invite you and the commissioners to come forward.

BRENDAN BUTLER, examined:

BILL PINCUS, examined:

SALLY GOOLD, examined:

MARGARET STEINBERG, examined:

Mr Pincus: As much as I would like to sit beside Mr Butler, unfortunately I have to go the Supreme Court. You will have to excuse me, I am sorry. I think that they are more important.

The CHAIR: I am sorry that the timetable has spilled over. On another occasion we could hear your views on their review.

Mr Butler: It might be appropriate for the commissioners to make comments initially so they do not get lost in the process.

Mrs Goold: I was not here yesterday so I cannot comment about the proceedings. I really do not have a comment to make on the proceedings this morning. As I understand it, there has been a perception that the commissioners have not been briefed adequately or appropriately. I wanted to give you my views on that as this is a review of the CMC.

I have no problems and no complaints about the briefings that I have had. If I have ever wanted to find out anything or needed clarification that information has been provided to me very promptly. I wanted to make that quite clear. As far as I am concerned, I have absolutely no difficulty and no complaints about how I have been briefed on issues.

Prof. Steinberg: I have not picked up that there have been comments about not being well briefed, so I will not address that. I am sorry I missed Dr Noel Preston and Mr Terry O'Gorman's presentations because I am very interested in those and have read all the papers. We have an extremely cohesive commission with skilled and dedicated staff, which is shown in the very considerable outcomes, many of which have already been highlighted.

I really want to comment on the very active and participatory role of community commissioners. I think they play a very important role. I think we broaden the perspectives and expertise that is brought around the table. We have very rigorous debates and deliberations, I can assure you. I think we contribute very considerably to the commission's decisions. In the areas where I play a particular role and take a particular interest, which are largely audit and governance, research and prevention and representing the commission on bodies like PEAC—the Police Education Advisory Council—I cannot comment sufficiently on the quality of work that is presented to me. Thank you very much for this opportunity.

Mr Butler: Perhaps I should add to those comments by pointing out that, although I am the only full-time commissioner, my fellow commissioners give a great deal of time to their roles with the CMC. Not only do we have fortnightly regular commission meetings which often extend for more than half a day, we frequently have special meetings in between those meetings. In addition, the commissioners sit on internal committees of the organisation or chair internal committees of the organisation and they have general access to the staff in relation to any matter they want to raise.

The role of the commissioners as the primary decision-making body in the commission is a very real and very significant one. Just to provide an example flowing on from what Mr Wilkinson was speaking about a few minutes ago, the decision whether to hold investigative hearings in the misconduct area is a decision by the commission. Those decisions are made after careful consideration by the commission in meetings and on the basis of being briefed on all the information available. Those briefings normally would not involve advice by general counsel. There might be specific matters where specific legal opinion has been sought, but ordinarily the advice is in the nature of a report and detailed information that provides a basis for that decision to be made. That is the sort of example of the level at which decision making is made in the commission by the five members of the commission. It is really not possible to canvass all of the matters that have been raised by the various witnesses. I will not attempt to do that.

The CHAIR: Being mindful of that practicality, we would value any written reply that you might wish to give us in response to some of the issues raised. That would maximise our opportunity to have your contribution. That would perhaps take the pressure off the time available today.

113 **Mr Butler:** Yes, thank you, Mr Chairman. We will certainly take advantage of that offer, and it is most appreciated. There are a few matters that are probably perhaps of more general interest that are worth referring to. If I could just pick up once again on this issue of whistleblower protection that was discussed yesterday. The Whistleblowers Protection Act places an onus on each particular government organisation to assess whether a complainant is making a public interest disclosure and to protect complainants in accordance with the act. What we try to do when complaints are received within the CMC is that complaints officers are of course alert to the provisions of the Whistleblowers Protection Act.

We are not the lead agency in respect of it; the OPSME is. If our complaints officers believe that a complainant might fall under the protections of the act, they will generally try to draw that to their attention. They will consider that when we are making decisions about how the matter might be dealt with. For example, if there is a lot of concern by a complainant who falls under the protection of the act, we might negotiate with them so that the complaint, when we take it up with the department, is anonymous rather than identifying the complainant or we might decide to investigate it ourselves to avoid the concerns arising that might exist or if the complainant is comfortable with the matter being dealt with by the department we might well draw to the attention of the department the fact that the provisions of the act might well apply and draw to their attention their obligations in that regard.

As Dr Mazerolle said yesterday, we have a particular interest in advancing further study in this area, particularly with a view to seeing if it is possible to develop a best practice model for Queensland in the area of protecting people who are making disclosures. There was a question yesterday about whether our survey had addressed that. Indeed, the survey document has a number of questions that specifically will inform us about an agency's knowledge of and involvement with whistleblowers protection. There is a question asking whether their organisation is aware of the act and whether they have documented internal reporting channels to enable disclosures to be made. There is a question which asks how the organisation's procedures allow internal reports to be made and it gives a number of options—that is, whether in writing, orally and so on. There is another question referring to section 44 of the Whistleblowers Protection Act which requires public sector agencies to establish reasonable procedures to protect officers. We ask if any such procedures are in place in their organisation and seek a yes or no answer and an explanation. We hope out of those questions in that general survey we will get a broad picture of the commitment to the requirements of the act from agencies. That is just one way of informing ourselves as we try to take our interests in this area forward.

On another topic, I thought I could follow up just a little in relation to the submissions as to the extension of investigative powers. I should point out that our submissions are made in the context of a need to have a better response in place for counterterrorism. I am sure I would not be here making a submission to this committee about an extension of powers at this point in time if it was not for the events of September 11 and Bali. The CMC, like many other organisations, is concerned in the light of those events to ensure that our ability to respond should the occasion arise—and we all hope it does not—is going to be adequate. The last thing we would want to do is to be caught in a situation where a terrorist incident did arise and we could have addressed whether appropriate powers were there and we find that the response is inadequate because the powers are not in place. So it is in that spirit that these submissions are made. In that context, although some of the submissions might have broader validity, we have no difficulty if they are drafted in such a way that they are specifically limited to the terrorism situation.

I think I should just make a comment about the submission about surveillance warrants which was addressed by Mr Sibley. In his submission he talked about it being equivalent to a common law general warrant and said it would represent a radical enlargement of the present statutory scheme and seemed to be guarded in his support for it. I just wanted to draw to the attention of the committee the fact that, although it would be an enlargement of the scheme in Queensland, in fact similar powers generally apply in both New South Wales and Victoria in relation to warrants for listening devices or surveillance devices generally in those states.

Under the New South Wales Listening Devices Act section 16 and under the Victorian Surveillance Devices Act section 15, there are provisions there allowing an application to be made for those surveillance devices where an offence is being or is about to be or is likely to be committed. Both those acts are in similar terms. In other words, there is no limitation to identifying a person. It is an offence based type process. So it is not all that novel that we would be pointing to that as an appropriate extension of power, particularly in relation to terrorism, whereas we said it may be difficult to obtain intelligence that clearly identifies the persons who were suspected of being involved.

I thought a number of quite valid matters were raised by Mr Anderson from Education Queensland. I should just indicate how those matters are being managed at the moment. He spoke about the difficulty for the department where they feel they need to suspend a teacher. Certainly, what we have encouraged all departments to do is where they have situations like that they should let us know and we will respond immediately. I find it hard to think of a situation where we would not immediately indicate to the department that it would be no imposition on any investigative step we might need to take for them to implement a suspension. You can think of rather special situations—for example, if it was thought that the officer should not be alerted in order to obtain some important evidence at the outset, but that usually does not arise in these departmental type investigations. My experience, when on occasion I have been contacted by directors-general with this sort of concern, is that we have been able to respond within a matter of a couple of hours and give them clear direction and indicate that, while it is a matter for them whether they suspend the person, it would not be a problem in terms of our investigation.

Mr Anderson said that it is also an issue for the department where a person is on paid suspension. Obviously, that is a cost to the department during the time of that suspension. We are very aware of that. We have urged departments to let us know about that so that we can take that into account in prioritising what we do. It is one of the factors that we take into account. There used to be a time when departments tended not to give us information like that for one reason or another and we carried on unaware that there were important financial considerations involved. Where we are aware of them, we certainly factor them in. All of these matters will be addressed through that section 40 process that we spoke about and also Mr Anderson spoke about. We are hopeful that that will clarify it even more so.

Mr Anderson also said that it would be useful for investigation guidelines to be available for the public sector. We are very far advanced in developing such guidelines. There is a working party at the moment that involves the Crown Solicitor, the Office of Public Sector Merit and Equity, the Ombudsman and ourselves that is looking at those proposed guidelines. We hope that in the not-too-distant future we will be able to finalise them. We intend ultimately to have a comprehensive set of guidelines, as I spoke about yesterday, that cover everything from how you report, how you investigate and then how you manage the impact on your officers. All of that will be on our Internet site and available to public sector agencies so they can access it and utilise it. I think we are at one with what the submission from Education Queensland is saying in all of those areas and we are quite alert to those issues.

I think I should just briefly indicate that Mr O'Gorman spoke about this issue of the need for tape-recording of police officers' interviews initially. As I said yesterday—and I was not in any way intending to devalue the importance of this issue—the CJC and the CMC over a long period of time have thought that it is an important issue that needs to be addressed—that is, this question of whether hand-held tape-recorders should be available to officers and the extent to which that should be so. As I said yesterday, in consultation with the QPS there has been a detailed research program trialling the tape-recorders in the Wynnum area. We are really waiting on the results of that to see what hard evidence there is in relation to the practical application of the use of the tape-recorders and also the issue of the costs—the resourcing issues—that have been referred to by the Commissioner of Police.

In respect of this business of whether there is a concern about police conduct, Mr O'Gorman stressed that he had such a concern but his suggestion seemed to be quite anecdotal. Our experience in this area has been that there are not a significant number of complaints that we are receiving that are directed to concern about the way in which police are conducting their investigations. We have not seen any evidence of the re-emerging of verballing as a systemic problem.

114 It is true that from time to time we do get specific complaints and we pursue them vigorously where we feel that that is possible. That information comes to us from complainant persons. From time to time we also receive information from Crown prosecutors through the Director of Public Prosecutions where they have a concern arising out of a case they have been involved in that there was impropriety by a police officer in the way the investigation was conducted. I need to stress that we are talking about isolated incidents, not what appears to be a broader pattern of behaviour. This is certainly an area where we wish to be alert to what is happening. If there is a concern, we are very interested in staying on top of that.

In relation to the idea of Mr O'Gorman that the CMC should direct the DPP to report the matters, as I said yesterday, the expectation of what we can do sometimes exceeds our powers, and this is an example. We have no power to direct the DPP to do anything. As I say, the DPP already is reporting matters and Crown prosecutors are reporting matters that come to their attention in the course of trials. That happens voluntarily and out of a concern for the public interest. I believe that that is working appropriately.

We have also directed our research attention in this general area looking at the recordings that are taken by the police of interviews they conduct with suspects. We have carried out an audit of police interview tapes. The CJC has done this in the past. We have done a follow-up of that audit, and you will see it referred to on page 62 of our submission. Our researchers listen to a random sample of police tapes which we take from police records of the interviews that have been conducted with suspects. We check those tapes for various matters that you will see set out in our report which relate to compliance with the Police Powers and Responsibilities Act, propriety in questioning and so on. Our findings are that, overall, there is high compliance by the police involved—certainly in the order of 80 per cent or more. But it is not perfect. We have found that there has been no significant increase—or deviation I suppose—since when we last looked at it in 1999. The commission is in the process of finalising a public report in relation to that audit and we will be publishing that soon. That is part of what we are doing in this area of trying to monitor police conduct in relation to the way in which these investigations are carried out.

The CHAIR: Mr Butler, would this be a convenient time for us to adjourn? I invite you to add any further comments to a written reply to the committee on all of the submissions that have been made.

Mr Butler: Certainly.

Mr FLYNN: You are aware that we pursued the issue of tapes. With the greatest respect to my former colleague Mr Wilkinson, if you consult with members you will find there is a great deal of difference between controlled and uncontrolled circumstances and environments where interviews can be taken by means of a tape-recorder. Are there any early indicators from the Wynnum trial as to whether police officers have any difficulties, given the fact that they would be willing to make it succeed because a tape-recorder would protect a police officer as well as condemn him or her. Are there any early indicators? Would you accept that there can be different reasons in controlled and uncontrolled circumstances why there may or may not be a tape-recording?

Mr Butler: I accept they are very different circumstances. I think we need to look at the practicality of this. That is why I was keen to get some evidence based information, if you like. I cannot give you an indication of the outcomes of that trial. It has been carried out by police researchers, not by the CMC. We are waiting on the report ourselves.

Mr FLYNN: You will be looking at that from that angle as well?

Mr Butler: Certainly. As I understand, the trial was looking at the different aspects. They gave these tape-recorders to police officers. They had a process of recording the usage of it. They were looking at the extent to which they were used and the resourcing implications of that. One of the big areas here is how you retain the information on the tapes and store it. The record-keeping process can be quite significant.

Mr HOBBS: Obviously, you would have read the paper this morning. During the course of the day or so we have heard that three or four per cent of the agency complaints are retained by the CMC and the rest go back to the agencies, which is the way it is supposed to go. I am just wondering how Chris Murphy's case involving $98 can be classified as a major event for a further

examination by the CMC. Can you give us some explanation as to why it was not referred back to Education Queensland perhaps, or were there other matters being investigated along with this?

Mr Butler: I would be happy to do that. Everything that has been reported on this has not given a clear indication of what was involved. The situation the CMC found itself in was that the matter was referred to the CMC with a suspicion that this officer had made a false claim. As it turned out what we had here, as admitted before the court, was a deliberate fraud by a person who was a senior officer, who was the manager of a financial unit in the department. When we looked at it an important factor was not only the level of this officer and the fact that what was alleged was a criminal matter, not just a disciplinary matter, but also that there was an allegation of the creation of a false receipt. In order to support the claim that was made to get the money this person had produced what appeared to be an invoice from a hotel that he claimed to have stayed at.

Checks with the hotel indicated that he had not stayed there that night. It seemed that it was not their invoice at all and that somebody had fabricated this document to deliberately mislead as part of the process of the claim. That was, in our view, serious dishonest conduct by an officer who had important responsibilities by virtue of his office. We pursued it. We looked at his work computer to see whether or not this document had been created there, and there was no evidence of that. Therefore, we thought it was necessary to get his home computer and to look at that. Our suspicion was proved correct, because his home computer demonstrated that this document had been typed up and created on that computer.

He was questioned by our investigators and he still persisted in what he has now admitted, through his plea, was a lie. He said, 'Oh well, I moved to another hotel—I can't remember the name of it—and I spent the night in another hotel.' Of course, if he had done that he would have been justified. This meant that to check that story we had to go further. If he had not told us that false story, that would have made more extensive investigation of that aspect unnecessary. So we had to go to Melbourne to check out that aspect of it.

It was only after we put our brief together and it all went to the DPP that it became apparent that he was prepared to admit what had been a criminal fraud. Of course, he pleaded guilty to that in the court. It is true that a modest amount of money was involved. As this investigation developed—it could have been simpler if there had been frankness—we were put in the situation where we had what was a deliberate fraud basically staring us in the face. We had the false document. It is a situation where we felt we could not walk away from it and we needed to finalise our investigation, and we did that. At the end of the day I think it is important for the public to know that public servants are accountable and that the taxpayer is not fair game in this area and that there is not a message within the Public Service that somehow or other a certain level of falsity is just going to be overlooked.

The CHAIR: Thank you, Mr Butler. In fact, this morning we had a brief hearing before the public hearing. The committee resolved to adopt the usual practice when matters like this come to our attention and to simply write to the commission inviting it to provide us with a preliminary advice on the matter that has been ventilated in the public arena. That letter will go to you in due course. So there will be every opportunity for the commission to advise us further in relation to the Murphy matter and also obviously to discuss the matter further, probably at our next joint meeting.

Mr Butler: Certainly. Thank you.

The CHAIR: Can I make a couple of closing remarks very briefly. Firstly, I want to thank the commissioner for the CMC, the part-time and full-time commissioners and also the senior officers and staff generally of the CMC for the efforts that you have put in in providing the submission and also supplementing it with your contributions yesterday and today. I want to also thank the Hansard reporting staff for their assistance, the committee research staff and all of the witnesses—our hardworking parliamentary commissioner and all of the other witnesses—for their efforts in assisting the committee. Although there is now only one media representative here, I also want to acknowledge the level of interest and reporting of the various media representatives that has really helped make this truly a public hearing exercise. Thank you very much.

The committee adjourned at 12.59 p.m.