

# Three-yearly review of the Crime and Misconduct Commission

Submission by the CMC to the PCMC

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May 2006



## **Our vision**

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

## **Our mission**

To combat major crime and improve public sector integrity.

## **We value:**

- ▶ integrity
- ▶ accountability
- ▶ excellence and innovation

## **We will:**

- ▶ act with independence, impartiality and fairness in the public interest
- ▶ show commitment to the rule of law
- ▶ embrace excellence, professionalism and teamwork in everything we do
- ▶ be responsive to our clients, and work collaboratively with our stakeholders
- ▶ respect and value our staff
- ▶ demonstrate leadership, innovation and flexibility in performing our duties

## Purpose of this submission

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Section 292(f) of the *Crime and Misconduct Act 2001* (CM Act) states that the Parliamentary Crime and Misconduct Committee (PCMC) has the responsibility:

to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission

The report of the PCMC's last review of the Crime and Misconduct Commission (CMC) was tabled in March 2004.

To assist the PCMC in its next review, the CMC has prepared this submission, which focuses on our achievements in the second decade of the post-Fitzgerald era, as well as on future directions and challenges.

Our submission should be read in conjunction with other documents, such as our annual reports and confidential briefing papers to the PCMC submitted every two months; these provide detailed information about our activities since the last review.



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## Abbreviations

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ACC	Australian Crime Commission
AFP	Australian Federal Police
CJC	Criminal Justice Commission
CM Act	<i>Crime and Misconduct Act 2001(Qld)</i>
CMC	Crime and Misconduct Commission
COMPASS	CMC complaints database system
DPP	Director of Public Prosecutions
EEO	equal employment opportunity
ESC	Ethical Standards Command
FCU	Forensic Computing Unit
FOI Act	<i>Freedom of Information Act 1997 (Qld)</i>
ICAC	Independent Commission Against Corruption (NSW)
JAG	Department of Justice and Attorney-General
LEA	law enforcement agency
MPS	Ministerial Portfolio Statement
NCA	National Crime Authority
ODPP	Office of the Director of Public Prosecutions
OMCG	outlaw motorcycle gang
PCJC	Parliamentary Criminal Justice Committee
PCMC	Parliamentary Crime and Misconduct Committee
PIM	Public Interest Monitor
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
PSAA	<i>Police Service Administration Act 1990</i>
PSU	Physical Surveillance Unit
QCC	Queensland Crime Commission
QPS	Queensland Police Service
SIU	Strategic Intelligence Unit
TI	Telecommunications interception
TSU	Technical Surveillance Unit
UPA	units of public administration
WPU	Witness Protection Unit



# Chapter 1: Our history and purpose

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**This chapter gives an overview of the origins of the CMC, how we are structured and the responsibilities of each major work area.**

## ORIGINS

Established under the *Crime and Misconduct Act 2001* (CM Act), the CMC began operating on 1 January 2002 with the merger of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC).

The CJC, established by the *Criminal Justice Act 1989* as a result of the Fitzgerald Commission of Inquiry into police corruption, had played a major part in creating a stronger, more accountable police service and public service for Queensland. The QCC, established by the *Crime Commission Act 1997*, had forged harmonious and successful partnerships with the Queensland Police Service (QPS) and other law enforcement agencies to combat major crime.

The combination of these two organisations resulted in a powerful new organisation for fighting crime and misconduct and raising public sector integrity in Queensland. Today the CMC is a well-integrated organisation, which consistently performs at a high standard across its several functions.

## Benefits of the merger

The CJC and QCC, despite different focuses (the former on police and public sector integrity, the latter on serious forms of crime), had developed essentially similar approaches. Both organisations, for example, attached great value to the roles of research and intelligence in informing, directing and prioritising their investigative and preventive work. Both organisations adopted a multidisciplinary team approach to complex and often protracted investigations; and for both organisations the development and maintenance of key partnerships was an important strategy in achieving outcomes.

Hence, the merger combined two bodies with fundamentally similar approaches to their work. In practical terms this has meant considerable cost savings and more sensible use of resources, leading to better outcomes.

Some readily observable favourable outcomes have been:

- ▶ a strengthening of the two organised-crime investigation teams and the paedophilia investigation team, previously located in the QCC, with the addition of a police investigator at sergeant level to each of the teams
- ▶ an improved forensic computer analysis capacity to assist in investigations into major crime (significantly, criminal paedophilia as an adjunct to internet paedophilia investigations), and official misconduct
- ▶ the ability for organised crime and paedophilia investigations to access a surveillance and expert technical support facility, which in the past was only available to the QCC when QPS and other agency commitments permitted
- ▶ the capacity of the new organisation — within then current funding arrangements — to establish a Proceeds of Crime Unit, which is central to the administration of the *Criminal Proceeds Confiscation Act 2002* (As the unit extends its ambit, funding issues are likely to emerge — see Chapter 4.)

- ▶ the incremental development of an approach to strategic intelligence that better interacts with the imperatives of major crime and official misconduct investigative activity and provides a ‘bridge’ between those activities
- ▶ an expanded resource base across the organisation, which permits the movement of people and skills to areas that come under extraordinary work pressure at various times, without diminishing overall output
- ▶ the development of common practices — particularly in staff management, policy development and operations overview — which have provided organisational efficiency and consistency. These in turn have allowed for continuous improvement of practices and strengthened partnerships with key stakeholders, especially the QPS.

Some challenges remain — for example, making our research function more supportive of our major crime function. The role of research in helping combat major crime continues to evolve. To date, our drugs research (see page 41) has focused on reinforcing the assessment of high-risk markets. We are now focusing on developing research projects to enhance our crime investigations. We are also considering processes likely to ensure closer alignment between crime research and operational activity, and are confident that greater cooperation and interaction across the two areas will be realised (see pages 40–41).

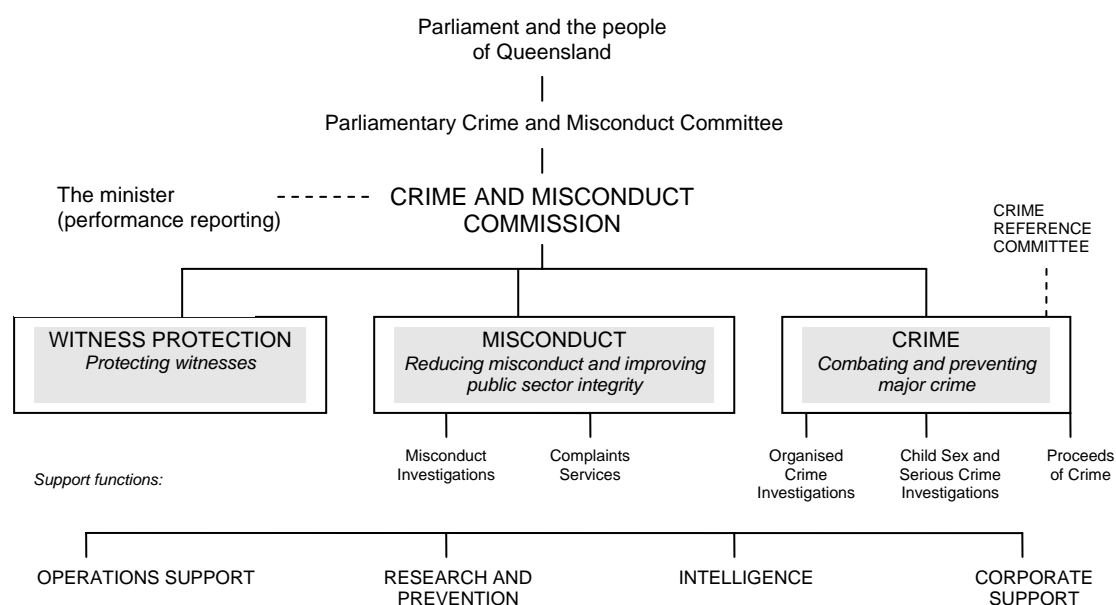
At the time of the merger, it was thought that there might be some tension between the performance of the misconduct function, which at times requires diligent investigation of the activities of police, and the crime function, which by legislative prescription requires an ongoing close partnership with the QPS. The Commission is satisfied that no such tension has emerged in any significant way. We attribute this to the following factors:

- ▶ our close cooperation with senior police charged with the maintenance of ethical standards in the service
- ▶ our ongoing liaison through committees of the kind referred to in Chapter 2 of this submission
- ▶ the cooperative way in which the CMC and QPS work together on protracted criminal investigations.

Issues that arose in the context of the merger of the two earlier organisations are no longer a distraction, and the CMC confidently expects that its history will serve only to strengthen its future performance.

## STRUCTURE

The following simplified organisational chart shows at a glance the CMC’s structure, including its chief work areas and business units. It also highlights the fact that the CMC is accountable to parliament and the people of Queensland through the Parliamentary Crime and Misconduct Committee.



## Staff establishment

Almost 300 people work for the CMC: as at 6 February 2006, there were 293.2 full-time equivalent positions, comprising lawyers, police, accountants, investigators, social scientists, intelligence analysts, computing specialists, administrators and support staff.

## CHIEF WORK AREAS

The CMC has three main outputs:

- ▶ combating major crime
- ▶ reducing misconduct and improving public sector integrity
- ▶ protecting witnesses.

The following areas contribute, in one way or another, to those three outputs.

### Crime

The Crime area of the CMC works to combat major crime, including organised crime and criminal paedophilia, by conducting specialist, multidisciplinary proactive investigations and performing other law enforcement tasks (see Chapter 3). For administrative purposes the CMC's civil confiscation function is located within the Crime area, carried out by the Proceeds of Crime Unit. Civil confiscation involves the restraint and ultimate forfeiture to the state of the proceeds of serious criminal activity (see Chapter 4).

### Misconduct

The Misconduct area receives and assesses complaints about misconduct, monitors how agencies deal with complaints, and helps build the capacity of agencies to prevent and deal with misconduct (see Chapter 5). It also investigates the most serious complaints, or those that involve the public interest (see Chapter 6).

## Witness Protection

The Witness Protection area offers a program to help protect those people whose safety has been endangered as a result of assisting a law enforcement agency fulfil its responsibilities (see Chapter 8). Operating under the *Witness Protection Act 2000* (Qld) and the CM Act, the area's responsibilities include:

- ▶ assessment of all witness protection applications from client agencies
- ▶ assistance to protected persons to meet their court commitments
- ▶ provision of education and marketing sessions to client agencies
- ▶ delivery of witness protection training under the Advanced Diploma of Public Safety (Police—Witness Protection), the first nationally accredited police course awarded such standing.

## Operations Support

Operations Support, led by the most senior police officer attached to the CMC, coordinates the activities of police working in the CMC, and provides expertise in surveillance, technical services and forensic computing (see Chapter 8).

## Research and Prevention

The Research and Prevention area performs research into crime, misconduct, policing, and other policy and legislative issues referred by the minister (see Chapter 4); and provides significant misconduct prevention and capacity-building services (see Chapter 5).

## Intelligence

The Intelligence area collects, correlate and analyses information and intelligence relevant to the CMC's Crime, Misconduct and Witness Protection responsibilities. It identifies and develops targets for CMC investigative action, provides strategic assessments and trends analysis on relevant matters, maintains an intelligence database, disseminates intelligence to law enforcement and government agencies, acts as a bridge between the crime and misconduct areas to facilitate exchange of information, and provides tactical information and intelligence support for investigative teams (see Chapters 3 and 5).

## Corporate Support

The Corporate Support area helps all areas of the CMC to operate effectively in the interests of achieving the organisation's goals. Its responsibilities include management of the CMC's internal and external accountability systems, provision of a secretarial service to the Commission, corporate governance, financial, administrative, human resource and information management, and communication services (see Chapter 10).

## Chapter 2: Changes made, and sought, to the CMC's special investigative powers

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This chapter:

- ▶ explains the CMC's jurisdiction
- ▶ explains the CMC's special investigative powers
- ▶ sets out important legislative amendments made over the past two years affecting how we carry out our investigations
- ▶ discusses the need for further amendments
- ▶ raises the issue of telephone interception powers and the stumbling blocks to the CMC's obtaining these important investigative powers.

### JURISDICTION

#### Crime jurisdiction

The CMC has not been given a general jurisdiction to investigate criminal offences. Its 'combating crime' function is limited to matters involving 'major crime', and then only if the major crime in question has been referred to it by the Crime Reference Committee.<sup>1</sup> 'Major crime' refers to criminal activity involving an indictable offence punishable by a term of imprisonment of not less than 14 years, criminal paedophilia, organised crime or (as a result of amendments made in 2004) terrorism.

The Crime Reference Committee may refer major crime to the CMC on its own initiative when it is satisfied that it is in the public interest to do so, and that an investigation into the matter is unlikely to be effective using the powers ordinarily available to the QPS.

The result of this legislative framework is that most investigations into major crime in Queensland continue to be conducted by the police. The CMC undertakes general and targeted investigations of certain categories of criminal activity involving major crime that come within the terms of a reference from the Crime Reference Committee. The Act allows these investigations to be carried out by the CMC with the assistance of a QPS taskforce, or through operational agreements with other law enforcement agencies.

A significant change to the way in which the CMC can investigate major crime will occur soon when the *Cross-Border Law Enforcement Legislation Amendment Act 2005* commences. The effect of this new legislation, designed to allow certain investigative steps to be undertaken interstate through approvals obtained in Queensland, is dealt with in detail later in this chapter (see page 12).

The CMC supports the current legislative framework for crime investigations.

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1. The committee, chaired by the CMC's Assistant Commissioner, Crime, comprises the CMC Chairperson, the Commissioner of Police, the Commissioner for Children and Young People and Child Guardian, and two people appointed by the Governor in Council as community representatives, of whom one at least must have demonstrated interest in civil liberties and one at least must be a female.

## Misconduct jurisdiction

The CMC's role in the misconduct area is to raise the standards of integrity and conduct in public sector agencies while at the same time ensuring that complaints about official misconduct and police misconduct are dealt with appropriately.

Misconduct complaints may be tackled by the CMC in one of three ways:

1. It may investigate the matter itself (especially serious matters or when the public interest is involved).
2. It may investigate the matter in partnership with the relevant agency.
3. It may hand the matter back to the relevant agency to deal with itself, subject to some form of monitoring by the CMC.

The CM Act requires the CMC to hand matters back to a relevant agency for investigation wherever it is practicable to do so, but, at the same time, it gives the CMC more power (compared with its predecessor the CJC) to monitor the processes and outcomes of agencies' investigations.

The CMC fulfils its monitoring role by obtaining interim reports, reviewing selected matters after they have been investigated, and reviewing how random and targeted classes of matters have been dealt with. In addition, it may help agencies deal with matters referred to them by assisting them to prepare investigation plans, by sitting in on interviews with witnesses and subject officers, and by providing financial analysis.

The CMC considers that the current Act provides an appropriate framework for it to investigate major matters, and monitor the way that agencies deal with complaints of misconduct.

## SPECIAL POWERS

### Hearings

The CMC may hold hearings concerning any matter relevant to the performance of its functions. In the case of major-crime and misconduct investigations, the CMC may compel witnesses to attend hearings for the purpose of answering questions. The use of this special coercive power is a vital part of the CMC's response to the growing sophistication of those engaging in corrupt activity — a sophistication that can defy ordinary investigative methods.

The hearings power is a potent investigative tool, which the CMC uses judiciously.

Hearings are mainly used:

- ▶ to secure the evidence of uncooperative persons, often in cases where there are professional confidentiality issues
- ▶ to secure otherwise unobtainable evidence for use in proceedings against persons of interest
- ▶ to eliminate possible scenarios and refocus investigations.

Most hearings are 'closed' (i.e. not open to the public). The decision to conduct hearings in public is made when the public interest is involved (see Operation Grand, next page).

## Hearings for misconduct investigations

Two examples of the CMC's use of the hearings power for misconduct investigations are set out below:

### Fraud by purchasing officer in QRail

Investigative hearings held in this matter revealed evidence of kickbacks and other corrupt activities involving a QRail officer and four external contractors. Charges were laid concerning corrupt arrangements in the awarding of QRail contracts worth almost \$1 million. On 10 September 2005, all five people involved pleaded guilty to fraud with circumstances of aggravation, and were sentenced to terms of imprisonment ranging from two to six years.

### Operation Grand

Between 23 September and 15 December 2005, the CMC conducted public hearings into allegations of misconduct concerning the Gold Coast City Council. Fifty-one witnesses were called and 328 exhibits were tendered. The Commission's decision to conduct hearings in public on this matter is supported by the words of the Salmon Report:<sup>2</sup>

Where there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors.

## Hearings for major-crime investigations

Since March 2004, hearings were conducted on 117 days for major-crime investigations (20 for organised crime, 91 for serious crime and six for paedophile matters), involving a total of 99 witnesses.

In organised-crime investigations, hearings are used in various contexts and for a range of purposes, such as:

- ▶ in the early stages of an investigation, to give informants the opportunity to avail themselves of the protection against self-incrimination that hearings afford
- ▶ after the arrest of the targets and the execution of search warrants (often within days of the arrest), to examine associates of operational targets
- ▶ to gather evidence to strengthen the existing case against the targets; for example, by extending the currently charged trafficking period in drug investigations
- ▶ to gather evidence of money-laundering activity associated with drug trafficking, and identifying the whereabouts of any proceeds.

Frequently, the CMC's organised-crime investigations are conducted conjointly with federal and interstate law enforcement agencies such as the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and the Australian Customs Service (ACS). When this occurs, witnesses are often confronted with telecommunications interception product (TI product), which is available to these agencies but not to the CMC.

TI product is particularly potent in drug investigations, given that mobile telephones are indispensable to the ability of drug dealers to conduct their business

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2. A report of the commission established under the chairmanship of the Rt Hon. Lord Justice Salmon: *Report of the Royal Commission on Tribunals of Inquiry 1966* (Great Britain).

activities. In numerous cases, witnesses who have steadfastly maintained their non-involvement in any illegal activity with the targets, immediately recant when intercepted telephone conversations are played to them. Once they have recanted, they may well proceed to give evidence of their associations and activities that goes further than the information already known to investigators.

Other strategies used by the CMC include confronting witnesses with surveillance videos and, on occasion, with covert police operatives to whom they may previously have made incriminating statements.

Serious-crime matters (i.e. major crime consisting of criminal activity involving an indictable offence punishable by at least 14 years' imprisonment) are invariably referred to the CMC by the QPS for the primary, if not sole, purpose of enabling the hearings power to be used.

Since March 2004, 10 serious-crime matters have been referred to us for investigation, most of which have involved actual or suspected murders, and in one case an attempted murder.

The purposes for which the use of the hearings power has been sought for these serious crimes have varied widely. They have included the following:

- ▶ to secure the evidence of uncooperative persons to whom the suspect is believed to have admitted involvement in the crime under investigation
- ▶ to overcome the concerns of a cooperative witness relating to professional confidentiality issues (e.g. doctor-patient confidentiality)
- ▶ to secure the evidence of numerous uncooperative eyewitnesses to a serious crime, and thereby reinforce the 'rule of law' in a small rural community
- ▶ to test the version of a suspect so as to assess (and possibly exclude) the suspect's involvement in the serious crime.

Two examples of the successful use of the hearings power for criminal investigations are set out below:

#### **Operation Bravo System**

This matter, referred to the CMC in June 2003, was a perjury investigation arising from the disappearance and subsequent location of Rockhampton woman Natasha Ryan.

Ryan's boyfriend, Scott Black, had provided a statement to police in 2001 in which he claimed not to have seen Ryan since August 1998. This statement was later tendered as evidence at the committal hearing of a man who had been charged with Ryan's murder. At the time of the referral of the matter to the CMC, there was no admissible evidence that Black knew that Ryan was alive when he made his 2001 statement to police. In the absence of such evidence, it was not possible to charge him with perjury.

In order to obtain the evidence, in July 2003 the CMC called 10 witnesses to investigative hearings in Rockhampton. Evidence was obtained from a member of Black's family that, after Ryan's discovery, Black had admitted living with her since 1998. The hearings were accordingly successful in achieving the object of securing admissible evidence that enabled police to charge Black with perjury. Black later pleaded guilty to the charge of perjury and received a custodial sentence.

### Operation Charlie Hush

This matter, referred to the CMC in September 2004, related to the unlawful killing of a man at Edmonton in August of that year. The deceased had been a guest at a party held at a house occupied by another man and his girlfriend, and had received a single fatal stab wound as he left the party.

Upon the arrival of police, the woman immediately admitted having stabbed the man after a short argument and later gave a lengthy account to investigating police. Accordingly, she was charged with the man's killing. Several days later her boyfriend attended a police station and, without providing further details, stated that he, and not she, had stabbed the deceased. He was also charged with murder.

As it was strongly suspected that the man had falsely confessed to the killing in order to exculpate his girlfriend, the CMC called six witnesses to investigative hearings held in Cairns in October 2004. The accused man was examined over a three-day period. He maintained his guilt until confronted with contradictory information given by the accused woman, and other forensic information from the crime scene. Prosecution proceedings against the man were withdrawn, and the woman has since pleaded guilty to manslaughter.

These hearings achieved the purposes for which they were referred to the CMC.

***The CMC considers that its current powers to hold public and closed hearings are appropriate and effective, subject to a proposed amendment to the CM Act that will allow the Assistant Commissioner, Crime, or the Assistant Commissioner, Misconduct, to preside at public hearings, as well as the Chairperson.***

### Other powers

In addition to its hearings power, the CMC has a number of covert and compulsory powers at its disposal in the fight against major crime and misconduct. These are:

- ▶ the power to issue notices to produce
- ▶ the power to use surveillance devices
- ▶ the power to conduct overt searches
- ▶ the power to conduct covert searches (for the crime function only).

### Production notices

The power to issue production notices is particularly effective in obtaining financial records to enable money trails to be established in relation to fraud or corruption investigations.

The CM Act empowers the Chairperson or his delegate to issue a notice requiring the recipient, within the time specified in the notice, to provide information or produce a stated document or thing that the CMC reasonably believes is relevant to an investigation.

We use this power extensively. Since March 2004, a total of 399 notices have been issued for the purposes of major-crime investigations, 324 for misconduct investigations and 284 for civil confiscation investigations. The power is most frequently used to seek the production of financial records from banks and other third-party institutions in order to build a financial profile of targets, their close relatives and associates, and other people of interest.

The CMC does not need to apply to an external agency for permission to use this power; however, there are strict accountability processes to ensure that the power is used appropriately and discriminately. A written application must be made for the issue of each notice, setting out in detail the nature of the investigation and the relevance of the documents or things sought.

**Confidentiality clauses.** Under the CM Act an attendance notice or a production notice may specify that the notice is a confidential document. Subject to certain exceptions, it is an offence for the recipient of such a notice, or anyone else who is or becomes aware of its existence, to disclose the existence of the notice to anyone else without reasonable excuse.

This provision helps preserve the integrity of an investigation. For example, it can be used if an investigation would be prejudiced by the target becoming aware that associates are to be called to a CMC hearing to give evidence of their dealings with him or her.

However, we are well aware of the practical limitations of the provision. There will always be a risk of recipients simply not complying with the confidentiality clause, particularly if the recipient comes from a criminal milieu.

Our approach is that notices should not be issued as confidential notices as a matter of course, but only when it is considered that there is some tactical or forensic purpose to be served in including such a clause. The written application for a confidential notice must include detailed reasons for the inclusion of a confidentiality clause.

Most of the notices issued for crime and misconduct investigations since the CMC's inception have not included confidentiality clauses.

## Surveillance devices

The CMC has the power to use the following surveillance devices in its investigations:

- ▶ listening devices
- ▶ visual surveillance devices
- ▶ tracking devices
- ▶ devices containing any combination of the above
- ▶ data-surveillance devices.

As well as the surveillance powers available under the CM Act, police officers attached to the CMC are able to apply for warrants under the *Police Powers and Responsibilities Act 2000* (PPRA).

Since March 2004, 49 surveillance warrants have been obtained by CMC officers in the course of major-crime investigations, issued either under the CM Act or the PPRA. One surveillance device has been obtained for a misconduct investigation.

Apart from the legal resources involved in applying for a surveillance warrant, considerable time and effort is required on the part of surveillance and technical officers in safely installing, maintaining and ultimately removing the devices without compromising an investigation. However, the greatest resource imposition relates to the necessity of establishing a listening or monitoring post for the duration of the period during which the device may be operational (which currently may be up to 30 days), and staffing the post with monitoring officers

throughout that period, generally on a 16- to 18-hour-a-day basis. In view of these considerations, surveillance devices are used judiciously.

### Overt searches

The ability to obtain a warrant enabling law enforcement officers to enter and search premises and seize relevant evidence is a basic tool for any criminal investigation, and is available for all CMC investigations.

Since March 2004, we have obtained 35 search warrants for misconduct investigations (under the CM Act) and 36 for major-crime investigations (under the CM Act and PPRA). These figures do not include any PPRA warrants obtained by QPS officers who are members of CMC–QPS taskforces established under the Act to help the CMC carry out crime investigations; nor do they include PPRA warrants obtained by officers of other partner agencies (e.g. the ACC and the AFP) in the course of joint crime investigations.

### Covert searches

The CMC has also been provided with extensive powers enabling it to search premises and vehicles covertly. This is a highly useful investigative tool as it enables the search and seizure of relevant evidence while still enabling the covert phase of an investigation to continue, thereby allowing more evidence of criminal activity to be gathered.

The CM Act permits the CMC to apply to a Supreme Court judge for a covert search warrant in crime investigations.

Covert search warrants issued under the Act are available in all four areas of major crime — organised crime, serious crime, criminal paedophilia and terrorism. Since March 2004, we have obtained 11 covert search warrants, under either the CM Act or the PPRA. However, as with other covert strategies, covert searches are resource intensive, and this consideration tends to limit the extent to which the power is used.

***The CMC is of the view that the investigative powers currently given to it under the CM Act for its crime, misconduct and civil confiscation jurisdictions should be maintained.***

## RECENT LEGISLATIVE AMENDMENTS TO ASSIST THE CMC

The CMC regularly liaises with the department responsible for the administration of its Act (formerly the Premier and Cabinet and now Justice and Attorney-General) about legislative amendments to help the CMC operate more effectively. With the support of the PCMC, we have been able to obtain a number of important amendments during the reporting period. These are detailed below under the following headings:

- ▶ cross-border investigations
- ▶ terrorism
- ▶ freedom of information
- ▶ amendments to the CM Act.

## Cross-border investigations

Since December 2002, federal and state law enforcement agencies have been involved in the development of legislation to allow seamless cross-border investigations of serious offences.

The scheme will provide a powerful tool for the CMC (and the QPS) to pursue serious investigations across state borders, without being required to seek further approval from the courts or authorities in other states.

Basically, the scheme involves the various jurisdictions agreeing to minimum standards for the use of certain powers, and minimum safeguards for the approval and auditing processes for such powers. Each jurisdiction also agrees to recognise process issued under legislation passed by the other jurisdictions, if the legislation complies with those minimum standards. Authorisations issued in one jurisdiction will then be able to be relied on in any of the others — i.e. tracking devices validly obtained in one state will be able to be followed into another; assumed identities issued in one state will be able to be used in any other cooperating jurisdiction; and controlled operations approved in one state will be able to operate in another.

One important issue for the CMC during the development of the legislation was preserving the status quo in relation to its controlled operations and surveillance-device powers. Currently, these powers can be used for the investigation of misconduct or 'misconduct offences', as well as for the investigation of serious indictable offences, major crime or organised crime.

The minimum standard for use of these powers in the model legislation is an offence punishable on conviction by imprisonment for a period of three years or more, so other jurisdictions would not recognise legislation that included 'misconduct' as a basis for use of the powers.

In order to address these concerns, the CMC's powers for misconduct have been separated from its crime powers in the amendments contained in the *Cross-Border Law Enforcement Legislation Amendment Act 2005* (which was assented to on 14 October 2005, but has not yet commenced). Mutual recognition will be sought from other states only for the powers that relate to the CMC's crime functions.

Some of the significant changes in the Act are as follows:

- ▶ The CMC's power to use surveillance devices for crime investigations will now, like its controlled-operations power, be contained in the PPRA. Mutual recognition will be sought for these powers from other states and the Commonwealth, meaning that cross-border investigations will be able to be conducted in other jurisdictions through applications made and authorities issued in Queensland.
- ▶ The CMC's power to use surveillance devices and controlled operations for misconduct investigations will be contained in the CM Act. Mutual recognition will not be sought for these powers, and their purview will basically remain as it is.
- ▶ A general authority to obtain and use assumed identities will be available to all CMC officers, not just police officers, and not limited to controlled operations as the present assumed-identity power is.
- ▶ 'Back-end' accountability regimes will be introduced. In the case of the CMC, these will largely involve the Parliamentary Commissioner auditing, and reporting on, our use of powers.

The CMC powers will in general terms remain the same, but there have been some changes (e.g. surveillance-device warrants can be issued for a period of 90 days instead of 30), and there are other changes that bring the conditions under which powers can be exercised and the contents of surveillance warrants and controlled operations authorities more in line with the model laws.

There are also transitional provisions that will allow existing controlled operations to continue and existing surveillance-device warrants to continue to have effect, but new applications will have to be made under the new provisions, which will entail re-drafting many CMC forms and precedents.

## Terrorism

The *Terrorism (Community Safety) Act 2004* amended a number of Queensland Acts to strengthen the powers of Queensland law enforcement authorities to prevent and respond to terrorist acts. In relation to the CMC, the following amendments were made:

- ▶ 'Terrorism' (meaning criminal activity that involves a terrorist act) was included within the definition of major crime, and a detailed definition of the term 'terrorist act' was provided.
- ▶ The CMC's power to obtain surveillance devices was broadened to allow warrants to be obtained for a 'relevant place' even where a named person could not be identified as a suspect.
- ▶ The 'additional powers' warrant provisions (which allow the CMC to enter premises where financial records are held and inspect the records and make copies; to seize passports, titles to property and securities and financial documents; and to require a person to provide information about property and financial transactions) were extended to apply to 'a crime investigation relating to terrorism' as well as misconduct investigations.

## Freedom of information

In 2005, the CMC became concerned about the operation of the *Freedom of Information Act 1992* (FOI Act) in relation to sensitive CMC information. Accordingly, submissions were made to the Department of the Premier and Cabinet and the Department of Justice and Attorney-General (JAG) about possible legislative amendment to deal with our concerns.

Amendments to exempt the CMC's Crime and Misconduct investigative and Witness Protection functions from the operation of Queensland's FOI legislation were included in the *Freedom of Information and Other Legislation Amendment Act 2005*, which was introduced into parliament by the Minister for Justice and Attorney-General on 11 May 2005. The amendments exempt the CMC's Crime, Misconduct and Witness Protection functions from the operation of FOI legislation, except in relation to people seeking information about their own cases. Such people are still entitled to access, subject to the general provisions in the FOI Act.

## Amendments to the CM Act

This Crime and Misconduct Legislation Amendment Bill 2005, introduced into parliament by the Minister for Justice and Attorney-General on 19 April 2006, contains a number of amendments to the CM Act, the *Witness Protection Act 2000* and the *Misconduct Tribunals Act 1997*. Many of the proposed amendments are in

response to recommendations made in the PCMC's last three-yearly review of the CMC.

The amendments to the CM Act will:

- ▶ allow notices to produce to be used for witness protection matters
- ▶ allow a presiding officer at a hearing to require immediate production of a document or thing by a witness at the hearing
- ▶ amend section 197 to clarify that any answers given by a witness after a claim of privilege against self-incrimination may still be used in proceedings about the falsity or misleading nature of an answer given by the witness
- ▶ allow senior CMC officers to serve for 10 years in total, instead of the current eight years, and to continue for a further five years if necessary for the efficient operation of the CMC
- ▶ delegate to officers below the level of Chairperson the power to engage all but senior staff
- ▶ clarify that the Parliamentary Committee and Commissioner may investigate the conduct of officers of the former CJC and QCC
- ▶ provide that the Public Interest Monitor (PIM) may give reports on noncompliance with surveillance warrants by CMC officers to both the CMC and the PCMC
- ▶ provide that the Chairperson of the CMC must report suspected improper conduct by officers of the former CJC and QCC to the PCMC
- ▶ allow the Assistant Commissioners to be appointed to preside at public hearings, in addition to the Chairperson.

The amendments to the Misconduct Tribunals Act relate to qualifications for appointment as a member and disclosure of material personal interests by members.

Amendments to the PPRA allow the PIM to give a report on noncompliance by a police officer who is also a commission officer to the CMC and the PCMC, as well as to the Commissioner of Police.

The amendments to the Witness Protection Act:

- ▶ broaden the range of matters for which a person can be suspended from the Witness Protection Program and for which protection can be terminated
- ▶ allow the CMC to provide short-term protection to people not included, or still being considered for inclusion in, the program; for example, to provide one-off protection arrangements for a person to attend court to give evidence
- ▶ broaden the scope of the offence of disclosure to include information about the program.

## **AMENDMENTS TO CM ACT SOUGHT BY THE CMC**

The CMC seeks the following additional legislative amendments to:

- ▶ make private entities that exercise public functions more accountable
- ▶ prevent witnesses claiming 'spousal privilege' to avoid answering questions
- ▶ introduce telephone interception powers.

## Private entities exercising public functions

In its submissions to the three-yearly reviews conducted by the PCJC in 2000–01 and the PCMC in 2003–04, the Commission noted that bodies that carry out public functions had changed over recent years from consisting almost entirely of government departments and statutory authorities to include bodies established by government under companies legislation, and other subsidiary bodies intended to conduct commercial activities. The submission noted that policies favouring commercialisation and corporatisation had supported the trend in this and other states to create such bodies. That trend, and the growing trend towards outsourcing the provision of certain essential government services to private contractors or consultants, has continued in the ensuing years.

A prime example of the trend at that time was the use of private contractors to carry out the government's important corrective services responsibilities. Those private contractors were subsequently brought within the jurisdiction of the CMC through specific legislation.

In its March 2004 report on its review of the CMC, the PCMC gave support, in principle, to the CMC's submission, but noted that the issue raised difficult questions of policy. The report stated:

This issue raises difficult questions of policy, as well as issues of the practicality of provision of adequate resources. As a matter of principle, the Committee believes that entities that carry out public functions utilising public monies ought to be subject to external scrutiny by a body such as the CMC. It is difficult to justify the result that the actions of such agencies and their staff should be beyond the jurisdiction of the CMC, simply by virtue of the private nature of the organisation.

However, any legislative amendment would need to be carefully drawn, to avoid any unintended result. It is also inevitable that any legislative amendment would increase the workload of the CMC, with resourcing consequences. This would be the case not only for the CMC, but also for the various entities that would become 'caught' by the increased jurisdiction, having regard to the principles of devolution and capacity building underpinning the current legislative regime. Whilst it is likely that some of the larger government-owned corporations already have well-developed internal and external audit and accountability processes, and could adapt relatively easily to a regime governed by the CMA, it is by no means certain that this could be said of all the bodies that would come within the wider net cast by any increase in jurisdiction.

The Committee is concerned that it is too soon after the commencement of the CMC to make what would be another major change regarding the jurisdiction of the CMC.

In its response to the PCMC's report, the State Government stated:

The Government supports the sentiment that now is not the time for any broad extension to the jurisdiction of the CMC. In the future, when the operation of the new Act is further settled, the Government might reconsider the ambit of the operation of the Act, especially if the matter is the subject of a recommendation in the Committee's next three-year review report.

***The CMC continues to be of the view that private entities that carry out public functions should be subject to scrutiny by the CMC, especially where public funding is involved.***

## Spousal privilege

The CM Act empowers the CMC to hold hearings in relation to any matter relevant to its functions. For crime and misconduct investigations, it also allows the CMC to compel witnesses to appear at a hearing to give evidence.

Section 190 of the CM Act makes it an offence for a person to refuse to answer the questions of the presiding officer at a hearing for a crime investigation. A witness is not permitted by the section to refuse to answer on a ground of privilege, other than legal professional privilege. Section 194 permits a witness to otherwise claim a reasonable excuse for not complying with a requirement to answer a question put to the person. Reasonable excuse is not defined in the CM Act.

On 10 December 2004, the Court of Appeal handed down its decision in the matter of *Callanan v. Bush*.<sup>3</sup> The background to the appeal was that a woman appearing as a witness before a crime hearing refused to answer questions about her husband's involvement in illegal drug activities, claiming 'spousal privilege' as her reasonable excuse for doing so. The Assistant Commissioner, Crime, Mr John Callanan, determined that it was not a reasonable excuse and required the woman, Mrs Bush, to answer the question. She maintained her refusal, and so contempt proceedings were brought against her. At first, Justice Douglas found that 'spousal privilege' did not apply to crime hearings and did not amount to a reasonable excuse for Mrs Bush's refusal to answer.

However, the Court of Appeal upheld Mrs Bush's appeal against this decision and declared that she was entitled to refuse to answer Mr Callanan's questions as far as they related to her husband's activities, because of 'spousal privilege'. The court did not consider that spousal privilege was abrogated by the provisions of the CM Act. Although section 190(2)(b) says that a person is not entitled to refuse to answer a question at a crime hearing 'on a ground of privilege, other than legal professional privilege', 'privilege' is defined for the purposes of crime investigations as a privilege recognised at law on the ground of self-incrimination or legal professional privilege. The court therefore considered that, although it could be argued that section 190(2)(b) was intended to abrogate all privileges, except legal professional privilege, the effect of the section was ambiguous because of the limited definition of privilege in Schedule 2 of the Act.

The availability of a claim of spousal privilege to witnesses before CMC hearings will clearly prejudice the investigation of major crime and misconduct. It also seems to be contrary to current government policy, as recognised by the 2003 amendments to the *Evidence Act 1977*, which removed the availability of spousal privilege during criminal trials. It would be incongruous that a privilege that cannot now be claimed even during criminal trials can be used to thwart an investigative process. In his second reading speech during the introduction of the Evidence Act amendments, the then Attorney-General noted:

The bill removes the marital communications privilege and ensuring [sic] married spouses can be compelled by the court to give evidence about each other through amendments to sections 8 & 11 of the Evidence Act.

Defacto partners do not currently have this privilege. There is real concern that this privilege has allowed abusive husbands to pressure their wives into withholding evidence about their abuse of children.

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3. [2004] QCA 478.

The availability of spousal privilege in CMC hearings clearly has the potential to hinder investigations being undertaken, and could also be used by targets of investigations to pressure their spouses into not providing information about them.

It seems clear that the intention of section 190 of the Act was to abrogate all privileges except legal professional privilege as a reasonable excuse for witnesses before CMC crime hearings, but the restrictive definition of 'privilege' for such hearings has nullified this intent.

One way to overcome this difficulty would be to amend section 190 to provide that a person is not entitled to refuse to answer a question on 'any ground of privilege other than legal professional privilege'. Also, 'privilege' would have to be broadly and generally defined for the purposes of section 190 to include 'any privilege recognised at law'.

The CMC made submissions about this issue to the Premier (as its then minister) last year. In July 2005, the Premier indicated that he did not support our submission, although no detailed reasons were given. Doubts have since been expressed about the validity of the decision in *Callanan v. Bush* by two Federal Court judges in deciding similar applications involving claims of spousal privilege, although both felt constrained by 'judicial comity' to follow the decision.

***The CMC seeks the committee's support for appropriate amendments to the CM Act to clarify that spousal privilege does not apply to CMC hearings.***

## Telephone interception powers

Queensland is the only state in Australia without telephone interception (TI) powers, despite the fact that this power is generally regarded as one of the most effective investigative tools for law enforcement agencies. It is also generally acknowledged as a less intrusive power than the use of listening devices, because a person's residence or office does not have to be covertly entered to enable telephone interception to take place, and the conversations of other people who enter the residence or office are not recorded.

The value of telephone interception powers has been recognised by all law enforcement agencies in Australia, and by previous committees. The CMC's position has been canvassed in numerous publications from 1995 to the present day. These publications are listed below:

### **15 February 1995 — *Telecommunications interception and criminal investigation in Queensland: a report (CJC)***

The CJC gave close consideration to the law enforcement benefits and cost effectiveness of telephone interception, and to the safeguards and accountability mechanisms contained in the *Telecommunications (Interception) Act 1979* (Cwlth). The conclusion reached was that the capacity of the CJC and the QPS to combat organised and major crime would be significantly enhanced by providing them with a strictly regulated power to intercept telecommunications. The CJC was also satisfied that the Act provided an appropriate framework for regulating the use of this power and for protecting legitimate privacy rights.

There were considered to be clear law enforcement benefits from using telecommunications interception. The view was expressed that, for some types of offences, such as those connected with organised crime, it was the only way in which offences could be detected and evidence of other offences obtained. The

CJC submitted that, compared with listening devices, telecommunications interception was a less intrusive and more effective method of surveillance, as well as being considerably more cost-effective. Moreover, it was noted that interceptions produced higher-quality evidence, which had been instrumental in securing convictions.

**Report 29, 1995 — *A review of the CJC's report on telecommunications interception and investigation in Queensland (PCJC)***

The PCJC was satisfied that:

1. The capacity of the QPS and the CJC to combat crime, especially major and organised crime, would be enhanced by providing those agencies with the power to intercept telecommunications.
2. Telephone tapping was as intrusive, but more cost effective, than other electronic surveillance procedures already permitted under Queensland law.
3. The *Telecommunications (Interception) Act 1979* (Cwlth) contains inadequate mechanisms for protecting privacy and for ensuring that the power to intercept telecommunications is not abused.
4. It would be inappropriate and impractical for the QPS and the CJC to have to rely solely on cooperation with commonwealth law enforcement agencies to access the powers of the *Telecommunications (Interception) Act*.
5. With further safeguards, the power should be granted to the QPS and the CJC.

**Report 45, June 1998 — *Three-yearly review of the CJC (PCJC)***

The PCJC noted that the government of the 47th Parliament introduced the *Telecommunications (Interception) Queensland Bill* in March 1998. This Bill was not passed prior to the calling of the 1998 state government election. Accordingly, the fate of that Bill was at that time uncertain. The committee expressed the view that detailed consideration of relevant issues was not possible within the timeframe for the tabling of that report. However, the committee considered that it was an opportune time to assess the appropriateness of the CJC's powers and the safeguards placed upon them, and that consideration of this issue by the next committee was appropriate.

**Report 50, 1999 — *A report on the introduction of the telecommunications interception power in Queensland (PCJC)***

The CJC submitted that all three Queensland agencies — the CJC, the QCC and the QPS — had over time sought the telecommunications interception power and were continuing to seek access to that power. In the public information paper on Project Krystal (a joint study and assessment of organised crime by the QPS and the QCC) those agencies stated that 'telephone interception capabilities are essential to the effective disruption of organised crime'.

The committee recommended that the CJC should be able to operate its own separate interception facility, but should, wherever appropriate, cooperate with other agencies to the fullest extent possible, with a view to maximising efficiencies and minimising costs.

**Report 55, March 2001 — *Three-yearly review of the CJC (PCJC)***

The committee noted that the CJC sought the committee's continued support for its request to be granted the TI power and the CJC to be able to establish a suitably secure and independent interception facility, rather than a shared facility with the QPS or the QCC.

The committee was satisfied that the CJC's ability to carry out its functions would be enhanced by giving it the TI power. The committee was further satisfied that appropriate safeguards and controls on the use of such power were available.

The committee recommended that:

1. The CJC be given the power of telecommunications interception, with safeguards, as set out in its Report No. 50.
2. The CJC be able to operate its own interception facility, and receive appropriate funding to allow it to do so.
3. The CJC should, in relation to any TI activities, wherever appropriate, fully cooperate with other agencies with a view to the maximising of efficiencies and the minimising of costs.

#### **Report 64, March 2004 — *Three-yearly review of the CMC (PCMC)***

The committee recommended that:

1. The Queensland Government introduce legislation to enable the CMC and the QPS to intercept telecommunications.
2. Any telecommunications scheme should include a role of an Inspector, such as the Public Interest Monitor, in the application process for a TI warrant.
3. The CMC be able to operate its own TI facility and receive adequate funding to allow it to do so.

The committee recognised, in discussing the appointment of an 'Inspector' for the proposed telecommunications scheme, that constitutional issues might prevent the Queensland PIM from carrying out a role in respect of telecommunications interception identical to that he plays regarding applications for surveillance devices, covert search warrants and detention orders to prevent terrorist acts.

The committee noted at page 65:

The Committee believes that it is desirable for the inspector or oversight agency to be involved at the early stage of making the application for the telecommunications warrant. A scheme which in general terms requires that the inspector be served with the application and permits the inspector to appear and make submissions at the hearing of an application for a telecommunications warrant, should be incorporated into any State telecommunications legislation. The Committee is however cognisant of the possible constitutional limitations in establishing such a scheme. It therefore recommends that any telecommunications scheme, if possible, provide for involvement by the entity given the inspector role at a stage prior to an application for an interception warrant being made.

Constitutional hurdles to the PIM's appearing at applications for TI warrants appear to be part of the reason that, despite the unanimous views of the various committees referred to above, the CMC still does not have access to TI powers.

### **Benefits of TI to the CMC**

Telecommunications interception can be used to target individuals, rather than picking up all conversations at a location, and is an extremely efficient and safe covert strategy that allows more informed and selective use of other surveillance strategies. For some types of offences, such as those connected with organised crime, this may be the only method by which offences can be detected and evidence of other offences obtained. Compared with some listening devices, telecommunications interception consistently produces high-quality evidence, which is often far more convincing because it records both sides of a conversation.

It is true that, for some CMC investigations, telephone intercept product can be obtained through joint investigations with federal and interstate law enforcement agencies, which have TI powers already. However, this access is not available for the vast majority of investigations conducted by the CMC. As a result, greater use has to be made of covert operatives, who are put at higher risk (due to the limits on intelligence able to be obtained on targets and their associates without telecommunications interception). In the case of investigations into police, the CMC also has to go to the trouble and expense of recruiting interstate covert operatives to enable the operations to take place.

### **Data-surveillance devices require TI powers**

The CMC already has the power to use data-surveillance devices. However, as detailed in its submission to the previous review, we have found that the use of data-surveillance devices on computers connected to the internet might not be permissible without a Telecommunications Interception Act warrant — that is, without TI powers.

The power is still available for use by the CMC on stand-alone computers; however, the use of the power for the investigation of criminal paedophilia has been substantially limited by this restriction.

The CM Act's extension of the definition of a surveillance device to include a data-surveillance device is novel. Neither the *Criminal Justice Act 1989* nor the *Crime Commission Act 1997* referred to such a concept.

### **Implications of being granted TI powers**

Should TI powers be introduced, it will be necessary for the CMC to establish a suitably secure and independent telephone interception facility, rather than a shared facility with the QPS or a federal agency. Anything less would compromise the investigation of police corruption. While there may be some additional costs associated with the establishment of independent facilities, the difference between the annual operational costs of a joint facility and the combined costs of separate facilities would be minimal.

***The CMC notes the support from previous committees in this regard, and seeks the committee's continued support in recommending that TI legislation be introduced in Queensland, and, if such legislation is passed, that funding be made available for the CMC to establish its own secure and effective interception facility.***

## **OBTAINING ADVICE FROM THE ODPP**

During the 2003–04 PCMC review process, the Director of Public Prosecutions (DPP) raised concerns about the general practice adopted by the CMC of obtaining advice from her office (the ODPP) before charging a person. The DPP noted that this practice had substantial resource implications for the ODPP and resulted in delays in responding to briefs referred to the DPP. The DPP also noted that in many cases the CMC legal officers who had prepared the briefs were senior to the prosecutors reviewing and making decisions on those matters.

The CMC confirmed that its practice was to refer to the DPP all cases in which it decided prosecution proceedings should be considered, except where police officers seconded to the CMC relied on their powers to effect arrests.

The CMC noted, however, that consideration had been given to referring certain categories of matters to the QPS as an alternative prosecuting authority.

Since then, the CMC has continued to refer matters to the QPS where possible. We also recently canvassed with the DPP the option of agreement being reached between the two offices on a protocol to determine which classes of matters should be referred to the DPP, and which could be the subject of charges by police officers seconded to the CMC. The DPP was very receptive to this idea.

The PCMC's report no. 64 recommended that the Act be amended to provide that, where the CMC decides that prosecution proceedings should be considered, the CMC must refer the matter to a police officer seconded to the CMC to decide whether criminal charges should be laid and, where appropriate, to lay charges. The committee also recommended that the Act be amended to provide an exception for a limited category of cases where it is necessary in the interests of justice that the matters be referred to the DPP for consideration.

The State Government, in its response to these recommendations, said:

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

The CMC has continued to liaise with the DPP in relation to these issues, and now considers that they can be dealt with on an administrative basis. We consider that an appropriate protocol can be developed between the CMC and the DPP about the classes of serious matters that should continue to be referred to her office, and that in other cases seconded police officers at the CMC can prefer charges.

The CMC would not undertake the prosecution of such matters, which would be dealt with in the normal course by the Police Prosecutions Corps or by the ODPP. The only, rare, exception to this would be for offences against its own Act. In these cases, the CMC considers that, like any other government agency that operates under a statute, it bears the primary obligation to see that breaches of its Act are prosecuted.

***The CMC agrees that the issue of which matters should be referred to the DPP can be dealt with on an administrative basis and that legislative amendment is not required to allow police officers seconded to the CMC to charge in appropriate cases.***

## Chapter 3: Combating major crime

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This chapter covers some of the same ground mentioned in Chapter 2 regarding jurisdiction, and then looks in some detail at the four kinds of criminal activity that fall under the umbrella of major crime:

- ▶ organised crime
- ▶ criminal paedophilia
- ▶ serious crime
- ▶ terrorism.

The chapter goes on to explain the important roles played by strategic intelligence and ‘human sources’ in combating major crime, and provides an overview of the CMC’s work in crime research and prevention. The next chapter is dedicated to the area’s administration of the regime for the confiscation of proceeds of crime through civil proceedings.

### JURISDICTION

The CM Act gives the CMC investigative powers that are not available to the QPS. The CMC is not, however, an alternative police service, nor does its Act intend it to be. Rather, the scope of its activities is limited to major crime.<sup>4</sup> Because it is not funded or resourced as a police service, the CMC’s effectiveness depends on its partnerships with the QPS and other law enforcement agencies, its specialist multidisciplinary approach to investigations, and the focused use of its special powers.

The Crime Reference Committee refers major crime to the CMC either on its own initiative or at the request of the Commissioner of Police or the Assistant Commissioner, Crime. Section 26 of the CM Act provides that the CMC combats major crime by:

- ▶ gathering evidence for the prosecution of persons for offences
- ▶ gathering evidence for the recovery of the proceeds of major crime
- ▶ liaising with, providing information to, and receiving information from other law enforcement agencies and prosecuting authorities, including agencies and authorities outside Queensland.

Section 23 of the CM Act also empowers the CMC to help prevent major crime. Some of the ways in which it may perform this function are set out in section 24 of the Act. The CMC’s crime prevention efforts are not limited to referred major crime, but involve a range of activities that draw on its expertise in identifying and targeting clear ways to prevent crime.

### Umbrella referrals

The CMC’s ability to contribute to the fight against major crime in Queensland is facilitated by the existence of several broad ‘umbrella’ crime referrals in the areas of organised crime, criminal paedophilia and terrorism. These broad referrals from

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4. Major crime refers to criminal activity involving an indictable offence punishable by a term of imprisonment of not less than 14 years, or criminal paedophilia or organised crime.

the Crime Reference Committee allow individual cases of suspected criminal activity that fall within the terms of the referral to be investigated without the necessity of a specific referral from the committee.

The chief umbrella referrals are as follows:

1. The **Freshnet** organised crime referral — criminal activity by members of ‘established criminal networks’, who, for example, have an understanding of law enforcement methods, or have access to law enforcement or regulatory information.
2. The **Gatekeeper** organised crime referral — criminal activity involving money laundering.
3. The **Atrax** paedophile referral — criminal activity involving the use of the internet to commit sex offences against children, or offences relating to obscene material depicting children.
4. The **Artemis** paedophile referral — criminal activity by members of a paedophile network involving at least two people, or by individuals who have offended against more than one child, in cases where the children are not members of the offender’s immediate or extended family.
5. The **Counter-Terrorism** referral — criminal activity involving a ‘terrorist act’.

The importance of a capacity to intercept telecommunications when investigating organised crime is referred to in Chapter 2 of this submission. It is further illustrated in the following examples of effective operations. So important is TI to the CMC’s approach that its availability through a national agency is one of several factors we consider when targeting crime syndicates.

In explaining the CMC’s role in the investigation and prevention of major crime, it is helpful to consider separately each of the four areas of major crime: organised crime, criminal paedophilia, serious crime and terrorism.

## ORGANISED CRIME

The CM Act defines organised crime as:

criminal activity that involves indictable offences punishable on conviction by a term of imprisonment not less than seven years, two or more people, substantial planning and organisation or systemic and continuing activity and a purpose to obtain profit, gain, power or influence.

The CMC adopts a holistic approach to its role in the investigation and prevention of organised crime in Queensland and draws on a wide range of organisational expertise and resources. In particular, it seeks to implement proactive and innovative investigative strategies with a high probability of tactical success. These strategies are based on sound crime research and accurate, well-timed intelligence.

In determining our investigative priorities, we use a risk-assessment method based on the threat criminal markets pose to the people of Queensland. This entails an ongoing evaluation of criminal markets and the rating of networks/individuals operating within those markets. Our objective is to dismantle or disrupt organised-crime networks and prevent crime. This entail not merely incarcerating key members of the networks, but also financially incapacitating the networks themselves.

Our operational activities in the area of organised crime involve three phases:

1. **Target identification** — This is a part of the strategic intelligence process, which involves developing business case proposals for consideration of tactical-target development. The process is explained in greater detail later in this chapter under the heading ‘Strategic intelligence’ on page 36.
2. **Tactical target development** — This phase tests the conclusions reached in the identification phase and progresses the investigation by both traditional and innovative investigative methods and, when appropriate, the CMC’s special powers. Target development is undertaken in two multidisciplinary, structured, investigative teams. Each team operates under the direction of an Operations Coordinator, and consists of police investigators and civilian staff with skills in financial investigation and intelligence. Legal support is provided on a case-by-case basis. The objective of this phase is to develop compelling cases for full tactical investigation.
3. **Tactical investigation** — The CMC does not have independent investigative capacity to conduct complex and protracted investigations on its own. While it has the two dedicated multidisciplinary teams described above, it largely depends on police taskforces established under the CM Act. The joint QPS–CMC Executive Team provides strategic direction for all joint investigations. The multidisciplinary teams also call upon technical surveillance and other investigative resources from across the CMC.

## Achievements

### Operation Alpha Submission Barrier

This operation began as an intelligence probe in July 2003. It targeted a person suspected of being involved in the trafficking of dangerous drugs (principally amphetamine and ecstasy) through a nightclub.

As a result of intelligence gathered from a number of sources, we commenced a joint controlled operation with the QPS in December 2003 to target the principal offender and his organisation. The operation also had a wider focus on the distribution of drugs and the commission of property offences throughout the nightclub scene.

CMC investigators gathered substantial evidence against all principal offenders through the monitoring of electronic surveillance devices, intelligence analysis from CMC and QPS resources and the sound deployment of tactical investigative strategies. Strong links were drawn between the principal targets and members of their organisation and others known to be engaged in similar activities.

The approval of the involvement of the ACC as a joint agency partner allowed for the lawful telephone interception of the primary target’s mobile telephones, providing investigators with the capability to gain valuable evidence against the group, and to direct their strategies in gathering evidence about the criminal enterprise.

The tactical phase of this operation closed on 8 December 2004 with the simultaneous execution of search warrants on 26 premises throughout South-East Queensland.

Property seized on the day included 6000 pseudoephedrine-based tablets; small amounts of cannabis, including plants; ecstasy tablets; water pipes and syringes; and 56 items of illicit laboratory equipment found at two properties.

Proceedings were commenced against 25 offenders on 54 charges, including trafficking, producing and possessing methylamphetamine charges against the six main targets. Crime confiscation proceedings have commenced to restrain more than \$1 million in property including real estate, money and motor vehicles. Six offenders are still to be charged with offences of trafficking in pseudoephedrine or production and/or possession of methylamphetamine.

The QPS-controlled Operation Alpha Submission closed in February 2005; it had involved 146 officers from State Crime Operations Command, Metropolitan Police Regions, the CMC, AFP and ACC. Forty-four people were charged with 239 offences including trafficking, producing and possessing a dangerous drug, possession and supply of weapons, possession of an explosive, fraud, and various offences relating to theft and possession of tainted property.

In total, the CMC and QPS operations resulted in 98 persons charged with 422 offences.

A money-laundering investigation is progressing from information received from a confidential source.

### **Operation Mexico**

Operation Mexico was approved on 15 October 2004 under the Freshnet referral. It targeted a criminal network engaged in the trafficking, production and possession of dangerous drugs, mainly methylamphetamine, and also the commission of offences in contravention of crime confiscation legislation.

A second tier member of this operation came to notice during the joint CMC–QPS–ACC Operation Alpha Submission Barrier as a primary source of precursor chemicals to the target group. Electronic and physical surveillance supported by tactical operations provided evidence of this person's direct involvement in the trafficking of dangerous drugs on behalf of the principal targets. In turn it has been established that the principal targets are in consort with identified interstate-based Italian organised crime figures engaged in the large-scale production of high-grade methylamphetamine subsequently transported and trafficked within the greater Brisbane environs. The group have acquired and distributed other forms of drug such as MDMA (ecstasy) and heroin.

The ACC provided joint agency partnership support in the form of telephone interception. The analysis of electronic surveillance product is providing substantial evidence of the target group's involvement in criminal activities.

The operation was closed on 28 January 2005 with the simultaneous execution of search warrants at the residences of the principal targets, leading to their apprehension, interview, arrest and charging in respect of serious drug offences.

An informant offered to assist in gathering evidence against the targets; investigative strategies are currently being developed.

As at 28 February 2006, 15 offenders had been arrested and charged with a total of 49 offences.

### **Operation Harvard**

Operation Harvard began in March 2003 as an offshoot of Operation Aero/Soho. The joint investigation targeted a principal offender and his close criminal associates who were involved in the organised theft of semitrailers, prime movers and other vehicles from within Queensland and interstate. The principal target had

amassed several properties and other assets to a value in excess of \$1.4 million. His employment did not support this rapid accumulation of wealth.

A number of significant arrests have already been made as a result of this investigation and over \$1.2 million dollars worth of stolen trucks, trailers and other machinery have been seized, along with drugs, cash and concealable firearms.

Information has been passed on to CMC investigators that the principal offender from Operation Harvard was part of a three-person group involved in the armed robbery and shooting of a person in 1993. QPS investigators have re-opened this case and, with the assistance of the CMC and ACC, are following up several new leads. It is probable that the principal target will also be charged with serious offences emanating from this matter at the operation's closure.

On 30 April 2003 the second phase of this operation closed, with search warrants being executed on several addresses in South-East Queensland.

Ten people were charged with 25 offences including serious drug offences and production of dangerous drugs, unlawful possession of firearms, possession of stolen property, cash and various quantities of cannabis, ecstasy, amphetamine and precursor chemicals.

In total, stolen property (prime movers, trailers, tankers) to the value of approximately \$1.4 million have been located and approximately \$1.2 million worth of property and assets have been restrained under the civil confiscation legislation.

New South Wales Police have undertaken to investigate the role of a NSW-based offender believed to have engaged in fraud offences concerning the transfer of \$190 000 from the principal offender in an effort to circumvent crimes confiscation investigations.

As at 28 February 2006, 15 offenders had been arrested and charged with a total of 83 offences.

## **CRIMINAL PAEDOPHILIA**

While the QPS remains the law enforcement agency primarily responsible for the investigation of criminal activity in Queensland involving criminal paedophilia, criminal paedophilia continues to be an area of specific and significant focus for the CMC.

As we do not have the staffing and other resources to assume wide-ranging or overriding responsibility for the investigation of such offences throughout the state, we have determined the following 'niche' areas of child-sex offending in which we can best make a positive contribution:

- ▶ offending by networked or recidivist extra-familial child-sex offenders
- ▶ offending by persons who use the internet as a tool in locating and grooming potential child victims.

These areas are the subject of our umbrella paedophile referrals.

The CMC acknowledges that the QPS and its regional Juvenile Aid Bureaux are better equipped to respond to complaints of intrafamilial offending, which continues to represent the bulk of offending brought to the notice of law enforcement agencies.

The CMC's paedophile investigations, including its ongoing internet-based investigations, are undertaken by a single multidisciplinary team, the Egret Team, which comprises four police officers, an intelligence analyst, an assistant intelligence analyst and a lawyer. As with organised crime investigations, technical surveillance and other investigative resources are often drawn from across the CMC.

The CMC is conscious of its crime-prevention function in its conduct of paedophile-related investigations, and endeavours to use methods designed to achieve preventive as well as tactical-investigative outcomes.

Our ongoing investigation of internet-based child-sex offending has been significantly assisted over the last three years by the introduction in 2003 of a new offence in the Criminal Code that is specifically focused on individuals who use the internet to target children for sexual purposes. Section 218A of the Criminal Code provides for the offences of using the internet with intent to procure a person under the age of 16 to engage in a sexual act, or to expose, without legitimate reason, a person under the age of 16 to any indecent matter. Importantly, these offences may also be committed in respect of persons believed by the offender to be under the age of 16. The offences apply even in the case of fictitious persons represented to the offender as a real person.

The maximum penalty for an offence under section 218A is five years' imprisonment, rising to 10 years in cases where the child is under the age of 12, or is believed by the offender to be under the age of 12.

At the time of its introduction in 2003, section 218A was innovative in that there was no equivalent provision in any other Australian jurisdiction.<sup>5</sup>

The Explanatory Notes to the Bill introducing the new offence make it plain how it was envisaged offences under section 218A might be detected:

The new section 218A will permit the police to be pro-active so that paedophiles can be stopped before a child is damaged. The law at present is more reactive, and there is a much higher risk that a child will be hurt before action is taken. The offence will also have a strong deterrent and educative effect.

The advantage of investigators using the Internet is that there will be real time recordings of the interaction between the alleged offender and the child (or police officer pretending to be a child) to be examined by the court. (Explanatory Notes, pp. 2–3)

Since the commencement of section 218A in May 2003, the CMC, through the Egret Team, has devoted considerable resources to the task of undertaking covert internet investigations with a view to the prosecution of persons for offences under section 218A.

These efforts have met with considerable success. From 1 May 2003 to date, as a result of CMC investigations, 40 people have been charged with a total of 226 offences under section 218A (in addition to numerous other charges laid, such as the possession of child pornography). In all these cases the offences were allegedly committed in respect of 'fictitious' persons; that is, covert CMC police officers posing as children in an approved controlled operation.

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5. In 2004 the federal parliament inserted similar provisions in the Commonwealth Criminal Code which took effect from 1 March 2005.

These prosecutions continue to receive high media coverage, which acts as a deterrent to other would-be offenders.

The CMC's internet-based investigations have also been significantly aided over the past three years by our development and use of an innovative computer software package that has enhanced the ability to conduct geographically focused internet investigations. The software package is known as Chat-Trak (Internet Protocol Identification [IPID]).

During 2003, we realised that the technology and methodologies we were using at the time were not capable of effectively identifying and targeting offenders based in Queensland. The technology then used restricted our ability to operate in chat rooms that attracted users from around the world. Intelligence gathered during operations found that Queensland-based paedophiles were predominantly operating in chat rooms in which they were able to mask information that could identify them. As a result, law enforcement agencies were unable to trace such offenders on the internet.

Hence the CMC embarked on a research project with a number of information technology companies and other law enforcement agencies in an effort to identify software that could trace and identify offenders who preyed on children via the internet.

After about eight months of research, a partnership was developed with the firm KPMG, which resulted in the Chat-Trak product being developed. This has resulted in the effective identification and arrest of numerous offenders in Queensland and, to date, is the only program that provides law enforcement agencies with the capability to conduct investigations into internet offences specific to a geographical area.

The CMC holds the exclusive software licence for Chat-Trak, but has provided the software to numerous other Australian law enforcement agencies to assist in the detection of offenders who are using the internet to commit crimes against children. Chat-Trak has been provided to the QPS, the AFP, and the New South Wales and South Australian Police Services, and extensive training has been given to officers of those agencies in its use. A request has recently been received from Western Australia Police for the software.

Chat-Trak was awarded a QPS State Gold Award for Excellence in Policing Operations in 2004 as Outstanding Project of the Year.

The CMC considers that its paedophilia investigations would be greatly enhanced by a power to intercept telecommunications, in particular electronic communications over the internet. Experience has demonstrated that individual and networked paedophiles use internet technology, yet this is an area of law enforcement activity in which it is unlikely the CMC will be able to access an interception capacity through a national agency. As is pointed out in Chapter 2 of this submission, although the Act gives the CMC the power to use data-surveillance devices of a kind that would be invaluable in paedophilia investigations, their use is strictly limited by the current lack of appropriate TI powers.

## Achievements

### Operation Atrax

Operation Atrax is the CMC's overarching investigation of internet-based criminal paedophilia. It is an approved controlled operation under the PPRA. CMC police officers who have received specialist internet training and who have been approved as 'covert police operatives' by the Controlled Operations Committee undertake internet engagements while posing as children. The rules of engagement for Operation Atrax stipulate that covert operatives are not to initiate any sexually related conversation and are at all times to adopt a 'passive' role in their dealings with targets.

Under Operation Atrax, between 1 March 2004 and 31 March 2006, a total of 37 targets were arrested on 550 charges.

Examples of engagements and outcomes are as follows:

- ▶ In October 2004, a covert officer, posing as a 13-year-old girl, interacted online with a target who presented as a 15-year-old boy in Year 10 at a Queensland regional high school. The target maintained the identity of a 15-year-old boy throughout a series of engagements during which he sent indecent material to 'the girl' and asked her for photographs of herself in her underwear. Inquiries disclosed that the target was in fact a 26-year-old male teacher at a regional state primary school. In December 2004 a search warrant was executed by CMC investigators at the target's residence. A laptop computer and storage media were seized. The target was charged with one count of using the internet with intent to expose a person under the age of 16 to indecent matter, and one count of possession of tainted property. In October 2005 the target pleaded guilty and was placed on 12-months' probation to receive psychological treatment as considered necessary, with no conviction recorded. He was later dismissed by Education Queensland.
- ▶ In early 2005 two CMC police officers posing as 13-year-old girlfriends interacted online simultaneously over a four-week period with a target who sent them sexually explicit images and instructed them in specific sex acts. In March 2005 the target was arrested in Townsville and charged with four counts of using the internet with intent to procure a person under the age of 16 to engage in a sexual act and three counts of using the internet to expose a person under the age of 16 to indecent matter. Forensic examination of his computer disclosed the presence of child pornography; he was also charged with one count of possession of a child-abuse computer game. The investigation disclosed that the target was a 28-year-old US citizen and a registered sex offender in the state of Illinois, who was in Australia on a student visa. He was denied bail. In November 2005, on pleading guilty, the target received a sentence of two years' imprisonment to be suspended after serving 225 days (the amount of time already spent in custody). On his release from prison the offender was immediately deported.
- ▶ In August 2003 a CMC police officer posing as a 13-year-old girl had numerous exchanges with a target who initially posed as a 13-year-old girl before 'introducing' the officer to her 45-year-old male 'friend'. The target proceeded to 'groom' the officer's identity over an extended period, by sending indecent images and engaging in sexually explicit conversation. The target ultimately arranged for a meeting for the stated purpose of having sexual intercourse and offered to pay \$500 if the girl was a virgin. The target was

placed under surveillance and was observed to drive several hundred kilometres from a regional centre to Brisbane. He was intercepted at the prearranged location for the meeting and was found to be in possession of almost \$1000 cash, condoms and a Polaroid camera. The target was a 55-year-old married man with a teenage daughter. He was charged with 11 counts of using the internet to expose a person under 16 to indecent matter, one count of using the internet with intent to procure a person under 16 to commit a sexual act, attempting to procure a person for prostitution, and possession of a child-abuse computer game. In May 2005 the target pleaded guilty to all charges in the Brisbane District Court and was sentenced to 18 months' imprisonment, to be suspended after three months.

### Operation Verona

As a result of information received by the CMC, a Townsville man's computer was seized in June 2002 and numerous pornographic images of children were discovered, resulting in the man serving four months' imprisonment. A second computer was seized from the man's home in December 2002.

Because the man's former employment with a Commonwealth agency had involved significant involvement with vulnerable families, the CMC undertook an extensive investigation in which members of over 70 families in North Queensland were interviewed. Inquiries were also made of other families with whom the man had contact in his local community.

No new disclosures arose from these inquiries; however, forensic analysis of chat logs found on both computers disclosed admissions by the target of his sexual assault of two young boys. These matters had previously been the subject of complaints to the police, but had not been taken to trial due to insufficient evidence. Based on this new evidence, the target was again charged with these matters.

In November 2003 the man was sentenced in relation to one of these matters to nine months' imprisonment, to be suspended after three months. In March 2004 the man was sentenced to a further three months' imprisonment, suspended after one month, in relation to the second matter.

The forensic analysis of the target's computers also revealed that he was part of an international network of 13 alleged paedophiles, located in Australia, the United Kingdom, Ireland and the United States. It was also discovered that an Irish member of this group visited Australia and briefly stayed in the man's Townsville home while he was in prison, before returning to Ireland.

The CMC disseminated information obtained during its investigation to relevant law enforcement authorities in the several countries concerned, resulting in further serious charges being brought against some of these men.

- ▶ In the case of the Irish man, in July 2005 he was sentenced in Ireland to five years' imprisonment for buggery of a 10-year-old boy.
- ▶ In one case involving a man in Washington State, US, the information provided by the CMC resulted in the man being prosecuted for offences including child rape. He was recently convicted of these charges and was sentenced to 117 years' imprisonment.
- ▶ A man from Maryland was able to be identified by US law enforcement authorities as a result of the information supplied by the CMC. He pleaded guilty to first-degree sodomy and was sentenced to five years' imprisonment.

- ▶ A Philadelphia man, identified with the assistance of the CMC, was charged with conspiracy, production and distribution of child pornography, and was sentenced to 35 years' imprisonment.

Further material has since been disseminated to the US Immigration and Customs Enforcement Agency at the request of the US Attorney-General's Department, which is now pursuing federal charges against all identified American members of the network. In February 2006 the primary target was charged with the indecent treatment of an 8-year-old boy in Bundaberg and has been remanded in custody. As at 28 February 2006, eight offenders had been arrested and charged with a total of 128 offences.

### **Operation Xena**

In early 2003 the CMC was approached by QPS Task Force Argos and its assistance sought to identify the nature and extent of a suspected paedophile network. Two men had been arrested by the QPS and NSW Police in 2002 for a range of child-sex offences allegedly committed in both states. A preliminary examination of a computer belonging to one of the men indicated that he was in communication with at least 11 other people, exchanging experiences of child-sex offending and associated images. The identities of some of these other people, who were referred to by their online personas, were unknown.

The data seized by the police were voluminous, consisting of over 2200 pages of chat logs from the internet chat medium ICQ and more than 5000 image files and 21 video files. CMC intelligence analysts were requested to analyse these data to seek to identify the other members of the network, and to identify further offences committed by the primary target or to find material that might corroborate the existing charges against the target. Over 450 hours were devoted by CMC analysts to this task.

The intelligence analysis indicated that the network comprised at least 12 paedophiles, located in Australia, New Zealand and the United States. Three Queensland-based members of the network were arrested and charged, one of whom was sentenced in the Brisbane District Court in September 2004 to seven years' imprisonment. At least 10 children were identified as actual or potential victims of the network, some of whom were 'shared' with other members.

As at 28 February 2006, six offenders had been arrested and charged with a total of 239 offences.

### **Operation Bravo Flamingo**

This investigation was a joint task force between the QPS and the CMC that started in November 2003 and revolved around complaints of a sexual nature against a religious minister who managed a boarding college located in a remote Indigenous community.

The investigation was triggered when a number of former students of the college made complaints that, while children at the college, they were sexually abused by the target. Investigations revealed that the target may have systematically abused both male and female children during the period he had been employed there: a period of approximately 30 years.

In February 2004 the target was arrested and charged with historical offences relating to the sexual abuse of children at the college. The investigation also resulted in other men being named as possible suspects of sexual abuse towards children, and extensive inquiries were undertaken with the aim of ascertaining

whether the primary target had been acting alone or had been a member of a paedophile network. Ultimately, no cogent evidence of networked offending could be obtained.

The main target was charged with a total of 17 offences including indecent treatment of children under 12, 14 and 16 years of age, and abuse of intellectually impaired children. However, due to difficulties with witnesses coming forward, the ODPP has decided not to proceed with these matters.

## **SERIOUS CRIME**

‘Serious crime’ is not a term defined in the CM Act but is commonly used to refer to one of the limbs of the definition of major crime, namely criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years.

The CM Act permits matters involving serious crime to be referred to the CMC on the application of the Commissioner of Police, the Assistant Commissioner, Crime, or the Crime Reference Committee. To date, all referrals have been at the request of the Commissioner of Police.

In the case of all serious crime referrals, the Crime Reference Committee must be satisfied that the following statutory preconditions under section 28(2) of the CM Act have been met, namely:

1. The QPS has carried out an investigation that has not been effective.
2. Further investigation is unlikely to be effective using powers ordinarily available to police officers.
3. It is in the public interest to refer the matter to the CMC.

The Act does not define ‘effective’ in the above context. The CMC’s view of its meaning for the purposes of section 28 is that the existing QPS investigation has not yielded a body of evidence capable of sustaining a prosecution case with reasonable prospects of success, and that further investigation using ordinary police powers is unlikely to result in the securing of such evidence.

Offences that have been the subject of serious crime referrals since 1 January 2003 include actual or suspected murders, other unlawful killings, attempted murders, the doing of grievous bodily harm, arson, the attempted destruction of a building by rioters, and perjury.

Hearings are held at the CMC’s premises in Brisbane and at any other place in Queensland considered appropriate in the particular matter for reasons of efficiency or otherwise. Since 1 January 2003 hearings have been held in Southport, Dalby, Rockhampton, Mackay, Townsville, Cairns, Cooktown and Mount Isa, as well as in Brisbane.

Serious-crime investigations ordinarily involve a process of adding value to police investigations by the use of the CMC’s coercive powers and, in particular, the hearings power.

The precise role undertaken by the CMC in these investigations depends on the particular circumstances of the case. However, as was mentioned earlier in dealing with investigative powers, such matters are almost always referred to the CMC for the primary, if not sole, purpose of gaining access to the CMC’s hearings power.

The holding of hearings is the culmination of a process begun at the time of preliminary consultations between the CMC and the QPS before a matter is referred to the CMC for investigation. This process entails moving forward from an initial, and sometimes very general, proposal by police investigators for the conduct of hearings to the development of a specific hearings strategy designed to maximise the outcomes to be derived from the hearings. Such strategies involve comprehensive briefings to CMC lawyers on all available evidence and consultation about the identity of witnesses.

The CMC's role in serious crime investigations is essentially to gather evidence to progress the investigation. The CMC does not provide any official report to the QPS at the conclusion of hearings, nor does it provide formal advice as to whether anyone should be charged or what charges should be laid. Informal consultation does occur at the request of investigating police, but the ultimate responsibility for charging remains with the QPS.

Unlike organised crime and criminal paedophilia, serious crime offers little scope for crime-prevention initiatives. The matters under investigation are generally crimes already committed rather than ongoing or prospective criminal activity; accordingly, the focus is on identifying the perpetrator and gathering sufficient evidence to enable a successful prosecution.

A noteworthy feature of our work in the area of serious crime over the past three years has been our preparedness, on occasion, to call persons already charged with an offence to a closed hearing to be questioned about matters relating to that offence. Historically, this was not permissible by reason of a 1982 High Court decision,<sup>6</sup> which held that, at common law, such an action would amount to contempt of court. However, the common law position was modified by section 331 of the CM Act, which provides that the CMC may start, continue or complete a hearing despite any proceeding that may be before a court, magistrate, justice or other person.

The discretion conferred by section 331 is exercised sparingly and cautiously. It has only been exercised in cases where it is considered that there are strong public interest grounds to justify calling an accused person to a coercive hearing. The only basis on which the section 331 discretion has been exercised so far has been to elicit evidence from the accused person about the involvement of other persons in the offence under investigation. Here are two examples:

- ▶ After a man was charged with a double murder on circumstantial evidence, he allegedly made a statement to police suggesting that others were also involved, without providing any further particulars. It was considered necessary and desirable in the public interest to call the man to a hearing to compel him to identify these other persons and describe the nature of their involvement.
- ▶ A man was charged by police with the attempted murder of his estranged wife on the basis that he had counselled and procured a person or persons unknown to kill her. It was decided to call the man to a hearing to elicit evidence from him as to the identity of the person(s) who actually shot his wife.

It is important to note that section 331 has not been invoked, and is unlikely to be invoked, to call an accused person to a CMC hearing in order solely to obtain

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6. *Hammond v. Commonwealth of Australia* (1982) 152 CLR188.

admissions from the witness as to his or her own involvement in the offence under investigation. While witnesses at a CMC hearing may be compelled to answer self-incriminatory questions, a consequence of the compulsion is that their answers are not admissible in evidence against them in any criminal, civil or administrative proceedings. Accordingly, there would be no forensic value or public interest consideration in calling an accused person to a hearing for such a limited purpose.

Neither the QPS nor the CMC has the capacity to access telephone interception in the vast majority of serious crime investigations. Indeed in only one murder investigation of many in which the CMC has been involved has any evidence derived from this source been available. The CMC considers that the availability of the power would significantly enhance police investigations of these sorts of crimes, reduce referrals for the use of CMC's coercive powers, and render hearings in serious crime investigations much more effective.

## Achievements

### Operation St George

This matter, referred to the CMC for investigation in February 2003, related to a riot at a St George hotel on 12 December 2002 which had caused substantial property damage. Although approximately 40 people took part in the riot, the police investigation had yielded evidence enabling only seven people to be arrested.

A total of 19 witnesses were called to CMC investigative hearings held in Brisbane over a total of 12 days. The hearings were conducted in a manner to minimise the risk of any adverse effects on the local St George community.

As a result of new information gathered during the course of the hearings, 28 people were identified as being involved in the commission of offences; accordingly, additional charges were laid on completion of the hearings. All persons charged received sentences of various lengths.

Other examples of our achievements in this area can be found on pages 8–9.

## TERRORISM

In December 2002, in the wake of the September 11 attacks in 2001 and the Bali bombings in September 2002, the Crime Reference Committee approved an 'umbrella' organised crime reference to enable the CMC to use its coercive powers (particularly its hearings power) to assist in the investigation of terrorist threats and terrorist-related activity in Queensland. The reference enabled the CMC to, at the request of the QPS, use its coercive powers to assist a QPS investigation of terrorist-related criminal activity. It was not intended that the CMC would undertake any independent investigation of terrorist-related activity.

In 2004 the Queensland Government amended the CM Act to specifically include terrorism within the CMC's major crime jurisdiction. Subsequent to this the CMC sought a fresh umbrella referral from the Crime Reference Committee, based on its counter-terrorism rather than its organised crime jurisdiction, so that it might continue to have the capacity to respond rapidly to any request for assistance from the QPS in relation to any suspected terrorist-related criminal activity.

It accordingly remains the case that any CMC investigation of terrorism, acts preparatory to the commission of terrorism or acts undertaken to avoid detection of or prosecution for terrorism, will occur on receipt of a request from the QPS.

## LAW ENFORCEMENT PARTNERSHIPS

The creation and maintenance of partnerships with other law enforcement bodies has been recognised as an area of key concern to the CMC and is an area of focus in our strategic plan for 2006–10. It is through partnerships that the CMC's activities are undertaken, since the CMC is not resourced to mount major operations on its own.

It is through partnerships that each agency can deploy its expertise and staff resources to address particular operational needs. The CMC, for example, may provide intelligence and financial analysis support while a partner agency provides investigative resources or conducts other activities requiring the short-term deployment of staff (as occurs when an operation is closed down and multiple arrests occur).

The CMC recognises that, to achieve its outputs and maintain relevance and credibility within the community and law enforcement environment, it must forge enduring strategic partnerships with a wide range of government and non-government agencies.

This is particularly so with regard to our fight against major crime, which crosses state and national boundaries. To combat organised and serious crime and criminal paedophilia effectively, the CMC has fostered strong partnerships with numerous state, federal and international law enforcement agencies including the QPS, ACC, AFP, ACS and Europol. Through regular liaison with these agencies and membership of a variety of state and national law enforcement forums (listed below), the CMC has been able to share intelligence and operational resources to achieve the significant results outlined later in this submission.

The CMC participates in the following state and national forums:

- ▶ **National Criminal Intelligence and Operations Forum** — works towards developing a 'picture of criminality' in Australia. The forum provides enhanced consultation on issues affecting specific agencies/jurisdictions of interest to others and prioritises operations and intelligence work for national coordination.
- ▶ **Queensland Joint Intelligence and Operations Group** — facilitates the sharing of intelligence and investigative resources between law enforcement agencies within Queensland.
- ▶ **Law Enforcement Advisory Committee** — ensures that law enforcement and national security issues are not compromised in the regulation of the telecommunication industry by the Australian Communications and Media Authority (ACMA).
- ▶ **Operational Management Board (QPS)** — determines priorities for operational resources with State Crime Operations Command (SCOC), considers approval of joint operational undertakings by the QPS and CMC into major and organised crime and criminal paedophilia.
- ▶ **QPS–CMC Joint Executive Team** — facilitates and oversees an effective partnership approach between SCOC and the Office of the Assistant Commissioner, Crime, to major crime issues.
- ▶ **Paedophile Investigation Coordination Committee** — facilitates an effective partnership between the QPS and CMC to criminal paedophilia investigations.
- ▶ **Human Source Working Group** — brings together key persons within Australasian law enforcement with a background in human source

management. The group has developed a set of principles that provide a measure by which agencies can review, enhance or develop policy and practice towards creating an extended human source intelligence network; one that ultimately will be capable of operating across the region.

The CMC's closest partner is the QPS, with which it conducts operations under joint multidisciplinary taskforce arrangements, sharing operational resources and using the CMC's coercive powers to dismantle and/or disrupt the criminal activities of organised crime groups and those engaged in sexually offending against children. This partnership extends to the use of the CMC's coercive hearing powers to help the QPS solve serious, unsolved, 'cold case' offences such as murder, arson and extortion.

The CMC also conducts ad hoc meetings with other key agencies such as the Department of Corrective Services, AUSTRAC, the New South Wales Crime Commission and interstate law enforcement agencies.

In particular, the CMC often seeks to involve national law enforcement agencies that have the capacity, under federal legislation not available to Queensland law enforcement agencies, to intercept telecommunications between suspected crime syndicate members.

## **STRATEGIC INTELLIGENCE**

An important aspect of the CMC's work in the organised-crime area is strategic intelligence. Through this capability, we monitor various crime markets in Queensland to identify emerging trends or changes in threat levels. Where matters are found to be of concern, projects are designed to produce well-timed, accurate and useful intelligence both for our use and for sharing with other stakeholders.

In addition to using intelligence in support of our own work, we also try to share relevant intelligence with other agencies and, where appropriate, the public. One way we do this is through producing and disseminating:

- ▶ crime bulletins, which are produced as unclassified documents for public consumption, and are designed to heighten community awareness of organised-crime issues, trends and forecasts
- ▶ intelligence digests, which are classified 'in-confidence', produced for law enforcement use only, and are designed to provide information about emerging trends in Queensland and the risk they pose.

In addition to the bulletins and digests, we also produce more substantial strategic intelligence assessments on specific issues where there is potential for the issue to affect law enforcement in Queensland. We research and analyse past and current developments and assess the current and future threat, or risk level, posed by the issue. The findings help determine priorities for deployment of CMC resources.

The combining of intelligence and research skills in the preparation of such assessments has proved to be an added advantage of the Strategic Intelligence Unit (SIU). The SIU adopts a multidisciplinary approach to the preparation of its products and calls on experts in strategic intelligence, research and financial investigation.

Since May 2003, three significant strategic assessments, three crime bulletins and five intelligence digests have been completed. Two further strategic assessments, a bulletin and a digest are currently being drafted. All of the completed publications

have received strong commendations from clients. It is of particular interest that a recent crime bulletin on the property crime market received overwhelmingly favourable feedback from the private sector, notably from an online auction provider and the insurance industry.

## Tactical intelligence

Intelligence analysis is an integral part of our multidisciplinary approach to major-crime investigations. In addition to supporting the investigation process, intelligence officers are responsible for ensuring the collation of intelligence to our database and the dissemination of useful intelligence to other agencies. A total of 1346 intelligence reports have been collated to the CMC's Intelligence Recording and Analysis System (IRAS) since March 2003. Of these, 754 were disseminated by electronic transfer to the Australian Criminal Intelligence Database (ACID) for sharing with other law enforcement agency personnel who use ACID.

Since May 2003, 249 disseminations have been made to partner agencies under section 55(2) of the CM Act. Of these, 176 were on the CMC's initiative, and the remainder in response to specific requests. These disseminations covered issues such as organised crime and drug networks, paedophile matters, amphetamine syndicates, outlaw motorcycle gangs, and money laundering. On a number of occasions, successful enforcement action has resulted from the intelligence we have disseminated.

## Intelligence publications

### Strategic assessments

#### **OMCG activity on the Gold Coast (March 2006)**

This strategic assessment uses criminal intelligence as an objective decision-making tool to target, reduce and prevent criminal activities undertaken by outlaw motorcycle gang (OMCG) members. It assesses the type, level and depth of criminal activities undertaken by OMCG members on the Gold Coast. The project has important implications for the CMC and other law enforcement agencies, as it provides context for future investigations, contributes to a greater understanding of OMCG activities in Queensland and identifies investigative strategies for disrupting the criminal activities of OMCGs in South-East Queensland. A condensed version was prepared for distribution to a wider law-enforcement audience.

#### **Property crime in Queensland (November 2005)**

This strategic assessment examines the property crime market in Queensland, primarily to reveal the nature and extent of organised criminal activity within this environment. It also reports on related issues such as the link between property crime and the illicit drug market in the state.

Although the assessment may only present 'the tip of the iceberg', it highlights the vast nature of the property crime market and the importance of fostering relationships between the private and public sectors through joint training, shared data and greater contact.

#### **Organised crime markets in Queensland (September 2004)**

This strategic assessment provides insight into organised crime and the illicit markets that drive organised criminal activity in Queensland. As well as updating an earlier strategic assessment (Krystal report, 1999), it:

- ▶ describes and analyses the current nature and extent of organised crime in Queensland
- ▶ identifies key issues
- ▶ assesses the current level of threat posed to the Queensland community
- ▶ makes comparisons with the 1999 Krystal assessment
- ▶ recommends strategies for continuing to monitor and analyse organised crime, and investigative and preventative mechanisms for disrupting it.

A condensed version was prepared for distribution to a wider law-enforcement audience.

#### **Organised-crime markets on the Gold Coast (September 2003)**

This strategic assessment presents intelligence describing the Gold Coast organised crime environment and assesses organised crime threats. It also includes descriptive, demographic and other statistical information to give context to this crime environment.

## **Intelligence digests**

#### **Clandestine methylamphetamine laboratories in Queensland (May 2005)**

This digest aims to increase the knowledge of all law enforcement officers about the production methods, precursors and reagents required to produce amphetamine, and the associated risks. It also cites relevant operational examples of amphetamine seizures and details emerging trends.

#### **Property crime in Queensland (December 2005)**

A condensed version of *Property crime in Queensland: a strategic assessment*, prepared in the form of a digest for a wider law enforcement audience.

#### **Organised crime on the Gold Coast (March 2004)**

A condensed version of the strategic assessment *Organised crime markets on the Gold Coast*, prepared in the form of a digest for a wider law enforcement audience.

#### **Illegal-firearms market in Queensland (October 2003)**

This digest examines the current situation, discusses the progress that law enforcement has made and assesses the future for illegal firearms in Queensland. It assesses that the illicit firearms market in Queensland is not large or overly organised. However, law enforcement needs to focus on its ability to track firearms both within and between jurisdictions, and to increase its knowledge base in relation to illicit firearms.

#### **Child-sex offenders exploit nudist activity (April 2003)**

This digest examines the risk posed to children who attend nudist clubs and assesses whether there are sufficient safeguards to protect such children. It concludes that the risk ranges from medium to high, depending on the particular establishment. To reduce this risk, it recommends that law enforcement initiate proactive strategies and that the nudist movement be invited to collaborate to prevent children being exposed to risk from child-sex offenders.

## Crime bulletins

### Property crime in Queensland (December 2005)

A condensed version of *Property crime in Queensland*, prepared for public distribution. This publication was particularly well received by sectors of private industry.

### Amphetamine: still Queensland's no. 1 drug threat (June 2003)

This bulletin provides a strategic assessment of the illicit amphetamine problem in Queensland, based on an analysis of a diverse range of sources including law enforcement, government, industry and members of the community. The main purpose of the bulletin is to inform the community about trends in the market for and supply of amphetamine in Queensland.

## Other reports

### Sexual offences against children in Indigenous communities (August 2003)

These two intelligence briefs, one classified and one non-confidential, examine sexual offences against children in Indigenous communities by:

- ▶ assessing the nature and scope of these offences
- ▶ assessing whether the level of risk posed by paedophiles in Indigenous communities is of significant magnitude to warrant action by the Queensland Government
- ▶ suggesting strategies that might be adopted to address the problem.

Reports on paedophile networks and illicit drug markets are currently being prepared.

## Target development

In addition to producing intelligence publications, the SIU develops targets that warrant full investigation under one of the major-crime references. Similar target development was conducted independently by the QCC and the CJC. Since the merger, the CMC has centralised this activity within the SIU. The unit forms a vital bridge between the crime and misconduct areas and is in a position to identify any overlap in investigations that can occur when crime investigations uncover corruption or when misconduct investigations uncover organised crime.

Target development involves identifying indicators of potential significant criminal activity by one or more individuals, and the planned collection and analysis of data in order to determine the nature and extent of the criminal activity and its scope in terms of networks. The time necessary to develop targets depends on the availability of information. Development frequently involves close liaison with a number of partner law enforcement agencies such as the QPS, the ACC, the AFP and other interstate agencies.

Since May 2003, the SIU has undertaken a series of target-development projects. Of these, four organised crime matters and one criminal paedophilia matter were referred to the Crime Intelligence Review Committee (CIRC) as suitable targets for further investigation. Of the organised crime matters, two became CMC tactical operations and two remained as CMC operational probes. The paedophilia matter became the subject of an investigation by the CMC's Egret Team.

## Human source program

An important investigatory and intelligence tool, particularly in the organised crime area, is the use of individuals who are in a position to provide confidential information. More often referred to as 'informants', these 'human sources' have the potential to provide timely and accurate information that is not available from other sources. However, finding, recruiting and handling such sources is not without considerable difficulties and risk to both the individuals and the officers involved.

In recognition of the importance of using such sources and the risks involved, the CMC has developed a comprehensive policy and related procedures covering this strategy. Additionally, we provide specialised training for our officers. The 'Human Source Operations Course' was initially designed and jointly run by officers from the CMC in partnership with the ACC (then the National Crime Authority) in the latter half of 2002. A total of 10 courses for CMC staff and other agencies have been successfully presented in conjunction with the ACC, with the last conducted in March 2006. The course provides a practical guide to human-source operations and satisfies an important and increasingly recognised requirement for law enforcement officers to be trained to handle human sources for strategic and tactical operations. The course is considered to be a benchmark in dedicated human source training in law enforcement and has attracted the interest of a number of police services from other jurisdictions.

The provision of training courses is a key factor in building the capacity of law enforcement agencies to combat and prevent major crime. These dedicated courses have a vital role in ensuring that law enforcement agencies deal appropriately with human sources and reduce the prospect of misconduct. In August 2005, at the request of the Queensland Commissioner of Police, we provided focused human source training to eight QPS officers who were part of or associated with the newly established QPS Dedicated Source Unit (DSU).

We are committed to remaining active in this area and encouraging the attainment of best practice standards not only among our own officers but also in other law enforcement agencies. In 2004 we participated in the Australasian Human Source Working Group (AHSWG). The AHSWG was designed to bring together key persons within Australasian law enforcement with a background in human source management to develop a set of key principles that could be endorsed by the Australasian Crime Commissioner's Forum (ACCF) and adopted throughout Australasia. The CMC has been invited to attend the next working group meeting in May 2006.

## CRIME RESEARCH AND PREVENTION

We continue to undertake a wide range of research to support organised crime and criminal paedophilia investigations. For example, research examining illicit drug markets and the nexus between drug use and crime has been, and will continue to be, a major focus. Research examining the handling of sexual offences by the criminal justice system, as well as uncovering the correlates of sexual abuse of children and the criminogenic consequences of such abuse, is another key focus.

We also continue to undertake crime-prevention research and activities, such as best practice initiatives in the areas of drugs, paedophilia and fraud prevention.

We undertake a number of drugs projects each year, as well as replicating many of these projects over time. The main purpose of this breadth and replication is to ensure sufficient insight into the areas under investigation. By combining and replicating sources of information from different populations, such as hospital emergency attendees, the general population and self-identified drug users, over time we are able to obtain a clearer picture of the broader issues surrounding the research results. Ultimately, the key focus of our research is to feed reliable information into the projects undertaken by the Crime area of the CMC.

While this research serves the purposes mentioned, we are now looking for ways to improve the relevance of our crime research to our operational activity. Moves have been made to identify and introduce processes that will give crime research a sharper focus on what is actually being done by its investigative teams. While trends in drug markets need to be identified, and such work will continue, more detailed research on particular aspects of the highest risk markets is likely to prove productive in terms of operational outcomes and give better practical effect to the purpose of our legislation. In this context we will continue to look for opportunities to work collaboratively with established and new research partners.

Future research projects will involve close collaboration between the CMC areas of Research and Prevention and Crime, facilitated through the new process whereby a project proposal must be submitted to the Crime Intelligence and Research Review Committee (CIRRC). In addition to approving project proposals, the committee will be responsible for determining the projects that can be undertaken in order to ensure that they contribute to the fight against major crime.

The major research initiatives in support of the CMC's crime and crime-prevention functions are outlined below.

## Illicit drug use

### Amphetamine research

The CMC continues to work collaboratively with Queensland Health in drug-related research aimed at crime prevention. In 2002 we undertook a statewide research project aimed at expanding our knowledge of the nature and extent of amphetamine markets in Queensland. This project employed an innovative research design to access a usually invisible population of more than 600 (primarily injecting) amphetamine users. The project provides detailed information about illicit drug use, price structures, market distribution patterns, the drugs-crime nexus and drug-related victimisation. We hope to replicate this study in 2006. The replication will provide a way to monitor any change in the characteristics, usage patterns, behaviours and socioeconomic environment of amphetamine users in the period between the two projects.

Data from the project are being used to provide a strategic assessment of the Queensland amphetamine market. The report is currently being written. It will focus on a range of issues such as amphetamine prices, amphetamine purchase patterns, and perceptions of the impact of law enforcement actions on user purchase patterns. These data will be supplemented with in-depth interviews with law enforcement officials directly involved in drug law enforcement, through which information was collected about the effectiveness of different policing strategies and the dynamics of the amphetamine market.

Further, a longitudinal study of a cohort of young amphetamine users in South-East Queensland is proposed for 2006 to complement the study previously outlined. The project aims to document the natural history of amphetamine use. It will explore patterns of amphetamine and other illicit drug use, factors that influence patterns and changes in use, patterns of service access, and how law enforcement and health interventions modify behaviour.

### **Cocaine research**

A drug-related research project due for completion in 2006 relates to cocaine use in Queensland. Using qualitative research techniques, this project seeks to:

- ▶ determine how certain cocaine users avoid contact with law enforcement and health authorities
- ▶ develop an understanding of cocaine distribution and supply networks
- ▶ gain an understanding of the perceived risks and benefits associated with cocaine use, and
- ▶ understand the different sociocultural contexts of cocaine use.

Information for the study has been collected from cocaine users in Brisbane and the Gold Coast. The project is being conducted in conjunction with an intelligence assessment by the SIU.

### **Monitoring drug use**

The CMC has ongoing involvement in a national drug research project conducted by the Australian Institute of Criminology — referred to as 'DUMA' (Drug Use Monitoring in Australia). Data are collected quarterly from detainees in police watch-houses, through interviews and urinalyses. The information collated provides a unique source of trend data with respect to market characteristics, as well as drug-user profiles and information on the nexus between drugs and crime. The CMC's analysis of the data was initially undertaken in 2002 and has been replicated in 2005–06. The report will be released in mid-2006.

We also work collaboratively with the Queensland Alcohol and Drug Research Education Centre on a project that measures the prevalence of alcohol and illicit drug use among individuals seeking medical assistance at the Southport Hospital Emergency Department. The study was undertaken in 2002 and the results were published in 2004 in the report *Exploring drug use: prevalence and patterns among emergency department patients*. The project established the value of using hospital emergency departments as effective sources of population drug-use information and valid research sites. Emergency departments provide access to relatively high-risk populations and enable the investigation of drug-use issues in an efficient manner. This project was repeated in 2005 to monitor any changes in drug-use patterns in this population over time.

### **Household survey**

In 2005 we carried out our annual survey (first conducted in 2002) of Queensland households to determine baseline indicators of illicit drug use and attitudes across the state. Each new wave of survey data is building up an increasingly valuable source of information. Used in conjunction with data from other illicit drug use monitoring exercises, such as the emergency department and watch-house surveys, it allows the CMC to offer comprehensive and accurate information about trends in illicit drug use to crime prevention, law enforcement and health agencies.

## Crime-prevention programs

We are working on a project that will examine violence across the life-course and the nature, extent and consequences of sexual victimisation during childhood for offenders serving non-custodial sentences in Queensland. The project involves face-to-face interviews with samples of female and male offenders. The interviews are designed to elicit information about a range of related domains, including demographic status, childhood experiences of violence, adult perpetration of violence, adult victimisation of violence, parental drug use, and criminal history and detainees' own past and present drug use. This project will help the Department of Corrective Services to design appropriate programs for offenders that may ultimately reduce the frequency of reoffending and expose some of the underlying causes of offending, drug use and mental health issues among offenders.

## Child sexual-abuse prevention programs

Child sexual abuse affects many communities but is especially a concern in Indigenous communities. The nature of the problem is complex. In summary, it relates to poverty, community deterioration and disorder, familial breakdown, and alcohol and substance abuse, as well as problems involving deficiencies in the delivery of vital services in law enforcement, health and welfare, and education.

Accordingly, we are engaged in a comprehensive project that will attempt to confront all these problems simultaneously. The project is designed to equip Indigenous communities to better help themselves, and to improve their future resilience. The sheer complexity of the problems has necessitated a long period of planning and negotiation between the various agencies involved. The Child Safety Directors' Network — established as a result of a recommendation in the CMC's *Protecting children* report — will manage the project.

The CMC continues to provide resources on its website for victims and survivors of sexual abuse, including links to various websites and publications that provide information about child sexual abuse and its prevention.

The site has five sections:

- ▶ paedophilia
- ▶ relevant Queensland legislation
- ▶ resources for victims of child abuse
- ▶ service agencies for children and families
- ▶ reporting sexual abuse.

## CHALLENGES FOR THE FUTURE

This chapter has pinpointed the key future directions of the CMC in the performance of its combating major crime function. Other more general challenges are emerging, and responses to them are being developed.

One area of particular importance is the impact of new technology on the preparation of briefs in complex criminal cases after the close of protracted investigations. The issue arises primarily in relation to organised crime investigations, the court briefs for which can consist of thousands of pages of evidence and hundreds of exhibits. We have started producing briefs in electronic form, thereby reducing the volume dramatically; however, the capacity of the

ODPP, the courts and legal representatives to work with such 'e-briefs' has been problematic. Nonetheless we intend to continue promoting the advantages of e-briefs. Accordingly, we are represented on the reference group established to assist the ODPP Case Management System Project in relation to technical and operational matters.

The adoption of time-saving technology is crucial to the CMC's commitment to the preparation of high-quality court briefs in joint agency investigations. Experience has established that better all-round outcomes are achieved when the CMC remains involved throughout the brief-preparation process, time-consuming and resource-intensive though it is.

While emerging technologies offer opportunities for increasing the impetus of the fight against organised crime and paedophilia, their use by criminals and crime syndicates represents an ongoing challenge. The emergence of e-crime and identity crime requires that law enforcement agencies like the CMC, both alone and in strategic partnerships, maintain a level of technical sophistication which at least matches that of offenders. Particularly in the area of internet offending by paedophiles, the willingness of offenders to adopt new technology and use newly developed encryption devices presents a constant challenge. The CMC's response lies in its commitment to continual training of its staff and enhancement of its technical capabilities, together with its pursuit of telecommunications interception powers.

## Chapter 4: Proceeds of crime

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**This chapter explains the legislation governing the recovery of the proceeds of crime, focusing on the CMC's role in the administration of the civil confiscation scheme, and outlines some of the current challenges.**

### OVERVIEW

The *Criminal Proceeds Confiscation Act 2002* (the Act), commenced on 1 January 2003. It introduced an innovative scheme for Queensland in the form of the civil confiscation scheme. At the time of its introduction its provisions were untested and judicial interpretation was uncertain.

The impact of the new legislation on the CMC was significant. It required new staff to be recruited and trained, specialised expertise to be developed, information management processes and policies and procedures to be formulated, and cooperative arrangements between key agencies to be established. Despite the considerable challenges, officers engaged in the function have delivered very creditable results.

Since its commencement, there have been many challenges to the provisions of the Act and several amendments have been enacted to close loopholes or to give full effect to the legislative intent; yet many provisions remain untested, particularly those relating to final relief.

Only one matter has been fully litigated to date: a matter that has thrown up a number of issues, which are currently the subject of appeals and cross-appeals by both the state and the respondent. Considerable uncertainty remains.

### LEGISLATIVE FRAMEWORK

The legislative framework is summarised in section 4 of the Act. It provides for two separate schemes, which, despite many similarities, are quite distinct. One scheme is non-conviction based and the other is conviction-based, similar to the Act's predecessor legislation, the *Crimes (Confiscation) Act 1989*.

#### Civil confiscation scheme

The first scheme, which is contained in Chapter 2 of the Act, is administered by the CMC. While it is commonly referred to as the 'civil confiscation scheme', it is more correctly a non-conviction-based scheme; unlike the previous legislation, it does not require the state to obtain the prior conviction of the respondent on criminal charges before confiscation can be effected, nor does it require the state to link the property to be forfeited to a criminal offence.

Property that may be subject to forfeiture under the scheme is limited to property derived from illegal activity (s. 13).

The state, in seeking to forfeit property under the scheme, is required to show that the 'prescribed respondent'<sup>7</sup> engaged in 'serious crime related activity'<sup>8</sup> within six

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7. See s. 28(3) for the definition of 'prescribed respondent'.

years of the date of the forfeiture application [s. 58(1)]. Once that threshold is established, all the property of the respondent is vulnerable to forfeiture, except to the extent that the respondent is able to show its lawful derivation.

## Conviction-based scheme

The second scheme, which is contained in Chapter 3 of the Act, is essentially a re-enactment of the conviction-based scheme that existed under the now repealed *Crimes (Confiscation) Act 1989*. This scheme is administered by the ODPP [s. 4(4)].

Apart from requirements to obtain a prior conviction and to link the property to the offence, a distinguishing feature of the conviction-based scheme is that it applies to property used in the commission of an offence as well as to property derived from the offence (s. 94).

Because of the necessity to obtain a prior conviction and to link the property to the offence, the conviction-based scheme is generally more restrictive in terms of the extent of property susceptible to forfeiture (and proceeds subject to pecuniary penalty) and is subject to the vagaries of the criminal prosecution process.

## Choosing the right scheme

While the scope of the civil confiscation scheme will generally be wider than that of the conviction-based scheme, it is important to note that the civil confiscation scheme is not available to confiscate property used in the commission of an offence. Consequently, there are matters which, due to their particular circumstances, will require a choice to be made as to which scheme is the more appropriate in the circumstances; or simultaneous confiscation action may be required under both schemes.

The DPP is the solicitor on the record for proceedings under both schemes [s. 12(3)], and both schemes allow the Supreme Court to make restraining orders over property as a preliminary step and, in addition to forfeiture orders, to make proceeds assessment or pecuniary penalty orders to recover the value of proceeds derived from the offending activity.

## STRATEGIC FRAMEWORK

The strategic framework is determined by the legislative framework, and, although the CMC and ODPP are charged with the administration of the civil confiscation and conviction-based schemes respectively, the effective operation of both schemes relies on considerable cooperation between a range of law enforcement, prosecutorial and property administration agencies.

Broadly speaking, the process of recovering the proceeds of crime involves a series of discrete phases:

- ▶ the initial identification of potential proceeds of crime by frontline law enforcement officers
- ▶ initial financial investigation and asset tracing
- ▶ restraint action

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8. See s.16 for the definition of 'serious crime related activity'.

- ▶ collation of evidence
- ▶ further financial investigation and various interlocutory steps, and
- ▶ settlement by negotiation or conduct of litigation.

Fundamental to both schemes is the initial identification of proceeds of crime. In Queensland, the QPS is the primary agency, although other state and federal law enforcement agencies may be the initial identification point.

All QPS matters are channelled through a specialist Proceeds of Crime Unit within the Major Fraud Investigation Group of State Crime Operations Command, where they undergo an initial assessment to determine the appropriate scheme given the particular circumstances of each matter. Potential civil confiscation matters are referred to the CMC and potential conviction-based matters are referred to the DPP. The resource imposition on the QPS at this stage is greater for conviction-based matters than for civil confiscation matters.

Opportunities missed at this level may later come to light at the prosecution level; however, delay until this late stage is undesirable because property is often disposed of between arrest and prosecution.

There is almost no opportunity for the CMC to identify potential civil confiscation matters independently, except where such opportunities emerge during CMC investigations.

Litigation of confiscation matters is undertaken by the DPP for both schemes. Administration of property under restraint may rest with the Public Trustee or the seizing authority; or property may remain in the custody of the owner.

## Key players

Under the civil confiscation scheme the key agencies are:

- ▶ the QPS (and to a lesser extent other law enforcement agencies such as the CMC, the ACC and the AFP), whose primary role is the initial identification of matters and provision of police investigative resources
- ▶ the CMC, which prepares matters for restraint and provides the financial investigative resources
- ▶ the ODPP, which makes the applications to court and acts as solicitors on the record
- ▶ the Public Trustee, which may be appointed by the court to take control of restrained property.

Each of these agencies also has a role under the conviction-based scheme, although that role may differ from its role under the civil confiscation scheme.

## Skill set

Effective proceeds of crime recovery, under either scheme, requires police investigative skills, financial investigation skills, legal skills and property administration skills. Under the civil confiscation scheme these skills are applied by the respective key agencies: QPS, CMC, DPP and Public Trustee. The conviction-based scheme is limited to some extent by the lack of dedicated financial investigation skills, which are provided by the CMC under the civil confiscation scheme. In a practical sense the property administration activity stands apart from the investigations and litigation activities.

Proceeds of crime recovery is a discrete and highly specialised area of law enforcement requiring practitioners to not only have a high skill level in their area of specialisation but also a sound knowledge of investigative methodology, the legislation, and the body of case law on the subject. While the number of staff allocated to the function is important, their experience and skill level are crucial.

One of the challenges that both the CMC and the ODPP have had to grapple with has been the recruitment of adequately qualified and experienced staff. From our perspective, the difficulties have been the current skills shortages in accounting<sup>9</sup> (particularly for accountants with relevant financial investigation and asset-recovery experience), and the resultant tightening of the accounting recruitment market. This situation has compelled us to recruit less-experienced staff and to devote efforts to training those officers in the specific skills required of financial investigators engaged in recovering the proceeds of crime.

## Resources

A result of the multi-agency approach adopted by the legislation is that changes in staffing levels in one agency will necessarily have a downstream effect on partner agencies.

The QPS, as the first agency in the process, is a primary driver of workflow affecting both the CMC and the ODPP. The contribution of the CMC, while directly affecting the ODPP, also indirectly affects the QPS through the level of demands for support on investigative activities. The ODPP, as the final agency in the litigation process, is driven entirely by the rate of referrals from the CMC (for civil confiscation matters) and the QPS (for conviction-based matters).

The staffing commitment of each agency is described below.

## The QPS

The QPS uses a central Proceeds of Crime Unit within the Major Fraud Investigation Unit, which itself sits within State Crime Operations Command. Proceeds of crime matters are referred to the Proceeds of Crime Unit. The unit makes the initial financial inquiries and asset identification, and makes an assessment against specified criteria as to whether the matter is practicable and, if so, which scheme is appropriate.

The matter is then either referred to the CMC for action under the civil confiscation scheme or is further developed before being referred to the ODPP for action under the conviction-based scheme.

The QPS staffing complement for this function is two Detective Sergeants and one Detective Senior Constable. This complement is supplemented on particular matters with financial investigative assistance provided by QPS Investigative Accountants within State Crime Operations Command.

Unfortunately, the police officers nominally dedicated to the proceeds-recovery function are regularly called on to perform other policing duties. Inevitably these distractions from their core function adversely affect their ability to offer support to the CMC's investigative activity when required.

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9. Recent research by the Institute of Chartered Accountants shows that careers in accounting are expected to be one of the biggest sources of employment over the next four years.

## The CMC

The CMC staffing complement for its civil confiscation function is:

- ▶ one SO1 Manager
- ▶ one PO6 Principal Financial Investigator
- ▶ three PO5 Senior Financial Investigators
- ▶ two PO3 Financial Investigators
- ▶ one PO2 Financial Investigator
- ▶ one AO3 Assistant Financial Investigator
- ▶ one AO3 Administration Support Officer
- ▶ one PO1 Financial Investigator (part-time).

As at 21 March 2006, staffing resources were committed to 61 matters subject to ongoing litigation; a further 21 matters involving property valued at \$6 million were subject to preliminary inquiries or awaiting availability of resources before initiating proceedings.

A comparison of CMC resources committed to civil confiscation activity with the resource commitment of the New South Wales Crime Commission (NSWCC) and the AFP (Queensland Office) is set out in Table 1.

**Table 1. Resources dedicated to civil confiscation, CMC, NSWCC, AFP (Qld)**

	<b>CMC</b>	<b>NSWCC</b>	<b>AFP (Qld)</b>
Director/Manager	1	1	2
Financial Investigators	4	13	10
Assistant Fin. Invest.	3	2	2
Legal support	0	3	0
Admin. support	2.6	6	0.6
<b>Total</b>	<b>10.6</b>	<b>25</b>	<b>14.6</b>

Notes:

1. Includes police investigators and seconded officers from ATO and ACS, not all of whom are qualified accountants.
2. AFP resources include three qualified accountants.

The workload in the civil confiscation function has made it necessary to increase the staffing commitment to this function since the start of the scheme (initially five officers). As proceeds of crime identification becomes embedded in investigative methodology, we expect that this rate of growth will continue for several years.

To date staffing costs for the civil confiscation function have been met from within the CMC's existing budget. Initially, those costs were met from cost savings arising from the merger of the QCC and CJC. As the resource commitment to the function continues to grow it is becoming increasingly difficult to meet the additional salary costs within existing budget constraints.

## Results

As at 17 March 2006, the results shown in Table 2 (next page) have been achieved since the start of the civil confiscation scheme.

**Table 2. Results since the start of the civil confiscation scheme (17 March 2006)**

		2002–03*	2003–04	04–05	2005–06
Restraining orders	Number	10	33	37	13
	Value	\$7.12m	\$10.55m	\$8.08m	\$5.64m
Forfeiture/PAO/Settlement	Number	1	2	15	17
	Value	\$0.018m	\$0.768m	\$1.62m	\$1.47m

Note: \* Half year from 1 January to 30 June 2003.

The lower number of restraining orders obtained in the current (2005–06) financial year is directly attributable to the deployment of resources at both the ODPP and the CMC towards the litigation of matters approaching trial rather than the advancement of new matters. This redefined focus of resources is also evident in the increase in the number of matters concluded and the fact that, as at 21 March 2006, the CMC held 21 matters involving property valued at \$6 million which had not been advanced to a point where proceedings could be initiated.

As at 21 March 2006, property valued at \$25.04 million was restrained under the *Criminal Proceeds Confiscation Act 2002* in relation to 56 matters. Those orders comprise the following:

**Table 3. Property restrained (2002–03 to March 2006)**

	2002–03	2003–04	2004–05	2005–06	Total
<b>Number</b>	7	16	23	10	<b>56</b>
<b>Value</b>	\$6.63m	\$6.59m	\$6.79m	\$5.03m	<b>\$25.04m</b>

A comparison of the Queensland performance with the confiscation function in New South Wales and the Commonwealth is set out in Table 4, next page. The data have been extracted from annual reports or other public information sources. It should be noted that differences in the collection and presentation of aggregated data between the jurisdictions make valid comparison difficult.

Remaining Australian jurisdictions are omitted from the table.

- ▶ Victoria has been omitted because, despite having civil confiscation legislation since 1 July 2004, it obtained its first restraining order in the current financial year.
- ▶ The West Australian confiscation legislation is radically different from the Queensland legislation, making valid comparison impossible.
- ▶ Civil confiscation schemes have only recently been introduced in South Australia and the Northern Territory, consequently there are no reported data available.

A more meaningful comparison may be drawn by comparing the results achieved by the state with the results achieved by the Commonwealth in Queensland under the respective civil confiscations schemes of each jurisdiction. Both schemes are similar in operation and each began on the same date.

With the exception of the figure for restraining orders for the year ended 30 June 2003, the data for the Commonwealth have been adjusted to take account of different counting rules and to count the results for the Commonwealth on the same basis as the Queensland figures. The figure for restraining orders for the year ended 30 June 2003 is unadjusted and overstates the situation regarding the

Queensland figures and the figures, reported by the Commonwealth DPP nationally.

The figures for the number of confiscation orders reported for the Commonwealth include condemnation orders under the Customs Act and are not directly comparable to the Queensland figures. For both sets of data, 'confiscation orders' includes forfeiture orders, proceeds assessment orders and settlements made.

**Table 4. Comparison between Queensland, Commonwealth and New South Wales**

	<b>Queensland</b>	<b>Commonwealth</b>	<b>New South Wales</b>
<b>Date of commencement</b>	1 January 2003	1 January 2003	3 August 1990
<b>Restraining orders</b>			
First 6 months of operation	10*	10	Not applicable
	\$7.1m	\$2.7m	Not applicable
First full financial year	33	107*	57
	\$10.50	\$87.80	Not available
Second full financial year	37	173*	59
	\$8.1m	\$83.82m	Not available
<b>Forfeitures/settlements</b>			
First six months of operation	1	2	Not applicable
	\$0.018m	\$0.034m	Not applicable
First full financial year	2	65*	5
	\$0.768m	\$6.42m	\$0.118m
Second full financial year	15	90*	19
	\$1.62m	\$9.21m	\$0.65m

Note: \* Includes conviction-based and non-conviction-based orders.

Source: Annual reports of the respective agencies for the respective periods.

On this basis, Queensland compares quite favourably with the Commonwealth in terms of restraining orders made and recoveries achieved (see Table 5, next page).

The total human resource commitment by the Commonwealth and the state to the confiscation function in Queensland is set out in Table 6, next page.

Data from the most recent annual report of the New South Wales Crime Commission also provide a useful indication of the growth in the civil confiscation function and provide a comparison of results with the cost of the function in that state. Information extracted from the 2004–05 annual report of the New South Wales Crime Commission is reproduced in Table 7, page 53.

New South Wales is the only jurisdiction in Australia with a history of civil confiscation legislation. The Queensland legislation was substantially modelled on its New South Wales counterpart, and we expect that progress under the Queensland scheme will substantially mirror the experience in New South Wales.

**Table 5. Restraining orders, confiscations, recoveries (Cwlth and Qld)**

	Commonwealth*	Queensland
<b>Restraining orders</b>		
30.6.03	12	10
30.6.04	19	33
30.6.05	32	37
period ending 9.2.06	14	12
<b>Confiscations</b>		
30.6.03	5	1
30.6.04	26	2
30.6.05	25	15
period ending 9.2.06	6	11
<b>Recoveries</b>		
30.6.03	\$0.106m	\$0.018m
30.6.04	\$2.9m	\$0.768m
30.6.05	\$1.8m	\$1.62m
period ending 9.2.06	\$0.445m	\$0.610m

Note: \* Data adjusted to take account of different counting rules in order to allow valid comparison

**Table 6. Human resource commitment (Cwlth and Qld)**

	Commonwealth	Queensland
DPP	11	9
CMC	–	10.6
QPS	–	3
AFP	14.6	–
<b>Totals</b>	<b>25.6</b>	<b>22.6</b>

**Table 7. Comparison of results with costs (NSW Crime Commission) 2004–05**

Year	Restraining orders	Total confiscation orders	Total realisable confiscation orders	Cost of confiscation litigation function
1990–91	57	5	\$118 515	\$1 630 000
1991–92	59	19	\$650 500	\$2 320 000
1992–93	24	36	\$3 123 528	\$2 694 000
1993–94	44	18	\$1 528 000	\$2 081 000
1994–95	73	38	\$3 376 639	\$1 641 404
1995–96	95	81	\$5 105 008	\$1 697 727
1996–97	145	67	\$3 983 345	\$1 175 802
1997–98	166	174	\$10 152 292	\$1 613 330
1998–99	101	122	\$9 386 039	\$2 243 000
1999–2000	156	115	\$11 015 299	\$2 199 923
2000–01	118	88	\$8 744 925	\$2 141 737
2001–02	159	76	\$9 411 967	\$2 073 817
2002–03	105	124	\$16 692 136	\$2 519 706
2003–04	129	106	\$15 204 694	\$2 945 999
2004–05	171	106	\$14 068 743	\$2 761 766
<b>Totals</b>	<b>1602</b>	<b>1175</b>	<b>\$112 561 630</b>	<b>\$31 739 211</b>

## Legislation review

Under section 266 of the Criminal Proceeds Confiscation Act the operation of the Act must be reviewed as soon as practicable after 1 January 2006. To date no announcement has been made regarding the conduct of such a review.

The CMC also notes that significant amendments to the New South Wales civil confiscation legislation have recently been made.<sup>10</sup> Given the close similarity between the Queensland and New South Wales legislation, the nature of those amendments will be closely examined to assess their usefulness in the Queensland context.

The CMC believes improvements to operational effectiveness could be made. In summary, these are as follows:

### Consent orders

Unlike the Commonwealth legislation,<sup>11</sup> the Criminal Proceeds Confiscation Act does not contain express provisions enabling the court to make consent forfeiture or proceeds assessment orders in the absence of being satisfied that the respondent engaged in serious crime.

It will be submitted that enabling the court to make consent orders without having to first satisfy itself of the respondent's engagement in serious crime will improve the efficiency of the scheme, obviate the need for settlements under a deed of agreement and improve the transparency of the process.

### Application to property held outside Queensland

Not infrequently, property of a respondent sought to be restrained is located outside Queensland but within Australia. Less frequently, but increasingly, property of a respondent is found to be held outside Australia.<sup>12</sup> Although there is some speculation as to whether the Act applies to property held outside Queensland but within Australia, there is no doubt that it does not apply to property held offshore.

***The CMC submits that the Criminal Proceeds Confiscation Act should contain express provisions concerning its application to property held outside Queensland, including property held offshore. Its current failure to do so represents a major inadequacy in the legislation and provides a simple means of avoiding its application.***

### Ancillary orders

At present ancillary orders available under the Act are a mixture of administrative orders and information gathering powers.<sup>13</sup> The Act provides that an application for an ancillary order can be made by any of the state, the respondent and the

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10. By the *Criminal Assets Recovery Amendment Act 2005* (NSW).

11. See s. 316 *Proceeds of Crime Act 2002*.

12. See *State of Queensland v. Filippa* where funds were transferred offshore.

13. See ss. 37 and 38.

Public Trustee and that notice of the application be given to the other parties.<sup>14</sup> The requirement to give notice to the respondent of an application for orders providing an investigative capability is a significant impediment to the investigative process.

***The CMC submits that the current provisions be separated to distinguish between administrative orders and investigative orders, notice be required for administrative orders, but that investigative orders be available only to the state and be available ex parte.***

## Scope of examinations

A recent challenge to the examination provisions<sup>15</sup> has led to a very narrow judicial interpretation of what constitutes ‘the affairs’ of an examinee.<sup>16</sup> That decision is contrary to judicial rulings in other jurisdictions<sup>17</sup> and appears to be based on the peculiar wording of the Queensland provision.<sup>18</sup> It is the subject of a current appeal by the state but unless overturned on appeal or subject of legislative amendment it represents a significant limitation on the state’s ability to usefully deploy the examination provisions in confiscation proceedings.

***The CMC submits that, subject to the decision of the Court of Appeal, the legislation make clear the scope of examination powers under the Criminal Proceeds Confiscation Act.***

## Use of examination information

Recent amendments to the Act governing the privacy of examinations<sup>19</sup> have cast significant doubt on the ability of the state to disseminate information obtained during an examination to appropriate investigative agencies or to make derivative use of the evidence.<sup>20</sup> In addition, rulings made during a recent trial<sup>21</sup> with respect to the admissibility of examination transcripts are the subject of a cross-appeal by the respondent and there remains considerable uncertainty about the admissibility of this evidence at trial.

***The CMC submits that provisions be inserted into the Criminal Proceeds Confiscation Act clarifying derivative use of examination evidence and the admissibility of examination transcripts in confiscation proceedings.***

## Onus of proof on proceeds assessment applications

At present the Act provides for the reversal of the onus of proof to the extent that a respondent is required to establish the lawful derivation of property in order to

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14. See s. 37(4) and (6).

15. In particular, s. 38 (1)(c)(i).

16. See *State of Queensland v. Meredith* (2006) QSC.

17. See *New South Wales Crime Commission v. Murchie* (2000) 49 NSWLR 465.

18. See s. 37(1) ‘Orders in relation to a restraining order’.

19. In particular s. 39B.

20. See also *Johns v. Australian Securities Commission* (1992) 178 CLR 408.

21. *State of Queensland v. Brooks* (2005) QSC.

prevent its forfeiture to the state.<sup>22</sup> However, the Act provides only a limited reversal of onus in respect to proceeds assessment orders<sup>23</sup> — a respondent is not obliged to explain the derivation of unexplained income notwithstanding the absence of any apparent legitimate source. The effect is that the state is compelled to prove the illegal activity from which the allegedly unexplained income is derived.

***The CMC submits that the reversal of the onus of proof relating to proceeds assessment applications ought to be consistent with the onus in respect of forfeiture, in order to give full effect to the objects of the legislation.***

### **Impact of pecuniary penalty orders on proceeds assessment applications**

At present, the making of a pecuniary penalty order on conviction for an offence precludes the state from seeking a proceeds assessment order based on the same criminal activity.<sup>24</sup> Because of the direct relationship between the offence and the consequent benefit derived, the amount of a pecuniary penalty order will almost invariably be substantially less than what might otherwise be recoverable under a proceeds assessment order.

***The CMC submits that the making of a pecuniary penalty order ought not to prevent the court from later making a proceeds assessment order based on the same serious crime-related activity, but that the amount of any pecuniary penalty should be taken into account in the making of a subsequent proceeds assessment order.***

### **Repatriation orders and property substitution orders**

The Act does not currently provide for the making of repatriation orders or property substitution orders. Enforcement of orders relating to property held outside Queensland, particularly property held offshore, can be problematic and depend on treaties or other arrangements between the jurisdictions. We submit that the ability of the court to make orders requiring a respondent to repatriate property to Queensland would provide a convenient means of enforcing the return of property to the jurisdiction. Failure to comply with the order would run the risk of contempt of court.

Property substitution orders would apply where illegally acquired property is disposed of either before or after the making of a restraining order and the proceeds of that disposition cannot be traced to subsequent tangible property.

***The CMC submits that the ability of the court to make orders substituting other property, instead of the disposed property, in a forfeiture order would render ineffective attempts to dispose of forfeitable property and give full effect to the objects of the Criminal Proceeds Confiscation Act.***

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22. See s. 68(2)(b).

23. See s. 83.

24. See s. 257(1).

## Property particulars statements

At present the Act makes provision<sup>25</sup> for the court to make a property particulars order requiring an owner of restrained property to give the CMC or Public Trustee a sworn statement of particulars of property and dealings with property in which the person has an interest. These orders are considered to be a vital information-gathering tool and an important means of requiring disclosure of all property in which a respondent has an interest. However, since the Act contains no penalty provisions for noncompliance and the court has shown a reluctance to enforce such orders, noncompliance is endemic.

***The CMC submits that penalty provisions should attach to noncompliance or, alternatively, forfeiture of non-disclosed assets should be available under provisions similar to recent amendments to the New South Wales civil confiscation legislation (see ss. 31A, 31B and 31C of the Criminal Assets Recovery Act 1990 (NSW)).***

## Public Trustee costs

At present there is a good deal of ambiguity concerning the proper operation of the provisions relating to the Public Trustee's fees and charges and the circumstances necessary before the Public Trustee appropriates property to recover its fees and charges.<sup>26</sup>

***The CMC submits that the legislation should be amended to make clear the conditions precedent to the Public Trustee recovering its fees, charges and outlays.***

## EMERGING ISSUES

Recently in Queensland the CMC has encountered incidents of property being moved offshore<sup>27</sup> and superannuation funds being used to hold illegally derived property.<sup>28</sup> Other jurisdictions have had similar experiences. Both these issues are seen as emerging challenges to the effective operation of the legislation.

Other jurisdictions have also extended the operation of the confiscation legislation to encompass the restraint and forfeiture of property which may later be necessary to meet victim compensation and restitution orders made by the court.

Most other jurisdictions have also created confiscated asset trust funds to meet the costs of the confiscation function and for other specified purposes, including the sharing of confiscated proceeds among contributing agencies.

The CMC sees these areas, summarised below, as warranting further exploration and examination of their usefulness in the Queensland context.

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25. See s. 38(1)(f).

26. See Part 1 of Chapter 6, in particular ss. 218, 220 and 223.

27. *State of Queensland v. Filippa* (2005).

28. *State of Queensland v. White* (2005).

## Use of superannuation funds

While there is no doubt that superannuation benefits are ‘property’ within the meaning of the Act and may be restrained, there is considerable doubt as to whether funds held in a superannuation account are forfeitable. Regulation 13.13 of the Superannuation Industry (Supervision) Regulations 1994 prevents a trustee of a superannuation fund from recognising any charge over superannuation benefits and would seem to prevent any forfeiture order from taking practical effect. Legislation at both the state and Commonwealth levels<sup>29</sup> enabling the forfeiture of superannuation benefits is applicable only in circumstances of public officers acting corruptly and does not apply to the circumstances seen in most confiscation matters.

A recent matter in Queensland involved an individual, immediately after his arrest but prior to a restraining order being obtained, depositing into a superannuation product a large sum of cash held in a bank account. The payment into the superannuation product appears to have been intended to protect the funds from possible forfeiture.

## Victim compensation and restitution

The Victorian legislation<sup>30</sup> enables property of a person to be restrained for the purpose of satisfying an order for compensation or restitution under the *Victorian Sentencing Act 1991*, where that order is likely to exceed \$10 000. Closer examination of this scheme will be necessary to assess its usefulness in the Queensland context.

## Confiscated asset trust funds

Queensland is the only jurisdiction that does not place the forfeited proceeds of crime into a special fund used to reimburse the costs of confiscation, with the balance being applied to other specified purposes. The purported benefits of a special fund are that it permits flexibility in funding the variable costs of confiscation and it transparently links confiscated proceeds of crime to purposes that seek to ameliorate the effects of crime — or to prevent, deter or detect crime. As in the case of victim compensation and restitution, the arrangements governing these funds need closer examination to assess their usefulness in the Queensland context.

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29. See the *Public Officers Superannuation Benefits Recovery Act 1988* (Qld) and the *Crimes (Superannuation Benefits) Act 1989* (Cwlth).

30. *Confiscation Act 1997* (Vic.).

## Chapter 5: Continuous improvement of the public sector

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This chapter outlines the CMC's strategies to help public sector agencies build their capacity to prevent and deal with their own misconduct.

### OVERVIEW

The aim of the CMC's misconduct function is to raise integrity and standards of conduct in the Queensland public sector, and ensure that any complaint which involves or may involve misconduct is dealt with appropriately. Hand-in-hand with this is the CMC's legislative responsibility to help prevent misconduct.

The Commission remains strongly convinced that responsibility for continuously improving the integrity of the Queensland public sector, and reducing the incidence of misconduct within it, must not rest solely with monitoring bodies such as the CMC. This responsibility must be part of the core business of the public sector agencies themselves, including the QPS. The biggest challenge for the CMC is to embed that notion in the public sector.

A strong culture of integrity requires that public sector managers accept responsibility for integrity within their domain, but are supported in that responsibility. Managers who are secure in the knowledge that they have the support of senior management and the bodies that oversee them are better placed to play this vital role in a way that will survive the normal turnover of management.

The CMC also recognises that, to ensure a truly integrated system, the agencies and monitoring bodies must continue to collaborate fully.

Under the CM Act, the CMC must ensure that a complaint which involves or may involve 'misconduct' is dealt with in an appropriate way, having regard to the circumstances and the misconduct principles set out in section 34 of the Act, namely:

- ▶ *Cooperation* — to the greatest extent practicable, the CMC and units of public administration should work cooperatively to prevent and deal with misconduct.
- ▶ *Capacity-building* — the CMC plays a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately;
- ▶ *Devolution* — subject to the other principles, action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit;
- ▶ *Public interest* — the CMC has an overriding responsibility to promote public confidence in the integrity of units of public administration and, if misconduct does happen within a public sector agency, in the way it is dealt with.

The application of the principle of devolution in the assessment of complaints of misconduct provides the mechanism for giving public sector managers responsibility to prevent and deal with misconduct; the CMC's capacity-building role (and prevention function) provides for support for managers to help them prevent and deal effectively and appropriately with misconduct; and the CMC's

monitoring role establishes an important accountability mechanism, which also provides information about any deficiencies in capacity.

The devolution principle is, of course, subject to the public interest principle. The Commission recognises that, despite best efforts, some misconduct will continue to occur within organisations. Accordingly, the CMC continues to investigate serious misconduct and matters where the public interest requires an independent investigation or the agency involved lacks the capacity to investigate.

Experience in other jurisdictions indicates that there will always be an overriding need for the independent overseeing body not only to investigate serious cases of official misconduct but also to be able to monitor and review any matter dealt with by an agency in order to reduce the risk of any re-emergence of systemic corruption.

## HOW THE CMC MANAGES COMPLAINTS

The CMC has primary responsibility for dealing with complaints of official misconduct within public sector agencies, including the QPS. However, the QPS has primary responsibility for dealing with police misconduct, while the CMC retains a monitoring role, albeit not as strong a role as it has for official misconduct.

The focus of our complaints-handling is twofold:

- ▶ to allow public sector managers to accept responsibility for integrity within their agency and manage important aspects of their officers' behaviour, but support them in this by:
  - providing an effective complaints-handling system, which allows agencies to deal with misconduct in a timely and appropriate way
  - building the capacity of agencies to deal with misconduct
- ▶ to satisfy the public interest by:
  - monitoring the way in which agencies deal with particular cases of misconduct, and identifying any deficiencies in their capacity to do so
  - investigating the more serious complaints of official misconduct, including corruption.

From 2002–03 to 2004–05 the number of complaints received per year increased by approximately 52 per cent. In 2004–05, 4435 complaints were registered. To date, the number of complaints for 2005–06 appears to have levelled off, though history suggests that there will be an ongoing pattern of increasing numbers that level off and then increase again. Given the increasing size of the Queensland population, and more awareness among the public and within the broader public sector, it is likely that there will be a further increase in complaints numbers over the coming years.

In addition, we receive thousands of complaints each year about matters not within its jurisdiction (2426 in 2004–05; 1029 for the period July–December in 2005–06).

## Review of Complaints Services

If it is to achieve its aims in handling complaints, the CMC itself must have the best systems and organisational structure.

In early 2004, we began a review of complaints services ['ROCS']. The project is designed to ensure a robust complaints-handling system that can meet an increasing level of demand in the long term. It aims to do this by enhancing the complaints-handling processes and practices, with a particular focus on timeliness, effective and efficient workflow, and effective decision-making.

Many of our complaints-handling business processes have already been refined, and further enhancements will be implemented over the next 12–18 months. It is also proposed to restructure those areas of the CMC that deliver the misconduct function (apart from Misconduct Investigations), to maximise the effectiveness of the monitoring, capacity-building and prevention functions and enhance client service.

## ASSESSMENTS

### The assessment process

Every complaint received by the CMC is assessed as promptly as resources allow to determine the best course of action, based on the principles set out in section 34 of the CM Act.

The decision may be one of the following:

- ▶ the CMC to investigate the complaint
- ▶ the CMC to investigate the complaint in cooperation with another agency
- ▶ the relevant agency or agencies (including the QPS) to deal with the complaint, subject to monitoring by the CMC, or
- ▶ no action is warranted by any agency.

In assessing a complaint, we take it at its highest in terms of the possible seriousness. If necessary, further relevant information is gathered as promptly as possible to determine the best course of action. Relevant information may come from external sources such as the complainant and the agency concerned, or from internal sources such as our Monitoring and Support Unit, intelligence analysts, and research and prevention officers.

During the assessment process, complaints officers are in communication with representatives of agencies, usually a designated CMC Liaison Officer, to consult about the capacity of the agency and the agency's view about appropriate action. When referring a complaint to us, an agency will often provide this information, as well as details of the circumstances surrounding the complaint.

In the process of gathering information from complainants, their desired outcome is ascertained.

Having formed a view about the circumstances, we then take into account the devolution principle, the public interest principle, and the capacity of the agency to deal with the matter itself.

We may sometimes receive a complaint that at first appears to indicate quite serious misconduct but then, in the light of the initial information gathered, there appears to be an innocent explanation for what happened. In such cases we will refer the matter to the agency to deal with by carrying out further inquiries and providing us with an early report for review. We will then decide whether the agency should continue to deal with the matter or the CMC should assume

responsibility for it, investigating the matter ourselves or in cooperation with the agency.

In assessing complaints, our focus is broader than simply dealing with any misconduct that may have occurred in a particular case. It also considers possible capacity-building and prevention issues, and opportunities to share helpful information with other agencies. In many cases, information is collated on the CMC's intelligence database and brought to the attention of relevant parties, including the our Crime function.

In 2004–05, 2.9 per cent of complaints were investigated by the CMC, 69.5 per cent were referred to the relevant agency to deal with (subject to our monitoring role) and 27.6 per cent were assessed on face value as warranting no further action. For the first half of 2005–06 (as at 31 December), the equivalent figures were 3.8 per cent, 75.8 per cent and 20.4 per cent respectively.

## Timeliness in the assessment process

The first significant increase in complaints received occurred in 2003–04, with 36 per cent more complaints received than in the previous financial year. This increase had a major impact on our complaints-handling resources, and by August 2004 the backlog of work and the timeliness performance figures had reached critical levels.

A major review of complaints-handling began, and by August 2005 — 12 months later — outstanding matters on hand had been reduced by 65 per cent (from 597 to only 209). The timeliness of assessments had also improved during this 12-month period, to a point where almost 93 per cent of complaint matters were being finalised within four weeks, despite the increase in complaints received.

For the six months ended 31 December 2005, 71 per cent of all complaints were assessed within one week, 87 per cent within two weeks and 92 per cent within four weeks. The equivalent figures for the six months to 31 December 2004 were 58 per cent, 73 per cent and 89 per cent respectively.

Of the complaints referred from agencies to the CMC during the six months ended 31 December 2005, 83 per cent were assessed within one week, 91 per cent within two weeks and 95 per cent within four weeks.

The net result of our efforts over the last three years has been a dramatic fall in the number of complaints to the PCMC about lack of timeliness on the part of the CMC in the assessment of complaints.

One of the reasons for this improvement is that the Commission has extended the delegation of its authority to assess the most appropriate action for dealing with a complaint.

Complaints are now categorised as follows (in decreasing order of significance):

- ▶ **Category 1:** the most serious, most sensitive and high-profile matters, which may warrant investigation by the CMC, and which are considered by the Misconduct Assessment Committee — a committee that includes the Director, Complaints Services, the Director, Misconduct Investigations, and the Deputy Director, Misconduct, and is chaired by the Assistant Commissioner, Misconduct

- ▶ **Category 2:** more complex matters, which may warrant monitoring by way of review and are considered by either the Complaints Services Assessment Committee or the Indigenous Complaints Assessment Meeting, and ultimately assessed by the Executive Legal Officer, Receivals and Assessments
- ▶ **Category 3:** relatively minor matters, which can be dealt with by the relevant unit of public administration, or those for which a section 40 agreement has been made with a unit of public administration (see below); matters that fall within this category have been well defined and effectively pre-assessed, and therefore do not require consideration by a committee, so they can be assessed by complaints officers.

As previously stated, complaints are categorised at their highest level of possible seriousness in the circumstances disclosed.

The intention has been to reduce multi-handling of complaints and enable assessment decisions to be made as expeditiously as possible at the appropriate level. Previously all complaints were considered by either the Misconduct Assessment Committee or the Complaints Services Assessment Committee.

Each complaint is case-managed through task allocation with expected completion dates, reminders, and regular reviews by senior managers of matters under assessment. New, more detailed performance indicators have been introduced in relation to the timeliness with which complaints are assessed and weekly targets achieved.

Meanwhile, a CMC Liaison Officer who needs a complaint to be assessed urgently can advise the CMC accordingly and we will give the matter appropriate priority.

### **Section 40 directions**

We receive complaints both from public sector agencies and directly from members of the public. In 2004–05, 65 per cent came from the public sector agencies and 35 per cent from the public.

Under section 38 of the CM Act, public sector agencies must notify us of complaints on a case-by-case basis. However, section 40 of the Act enables the CMC to modify that obligation. To enable agencies to start dealing with complaints promptly, and to allow us to carry out assessments more rapidly (by minimising the processing of these complaints), directions under section 40 of the Act were developed for three major agencies, enabling them to deal straight away with certain categories of complaints (Category 3 as defined above) and advise the CMC of those complaints by schedule on a regular basis. We are in the process of extending the section 40 directions to all departments and larger agencies, and to some of the larger councils in the local government sector. This process is well advanced.

### **Dealing with telephone complaints**

A significant proportion of the CMC's resources are taken up with assessing the complaints received directly from the public. In 2004–05, 53 per cent were received by telephone or by face-to-face interview, and 47 per cent in writing.

Many of the telephone calls and letters we receive relate to matters that are not within our jurisdiction (64 per cent within jurisdiction, compared with 36 per cent outside). We continue to strive for the best way of efficiently utilising our resources to deal with these complaints. We currently have a rostering system for complaints

officers to take telephone calls, and an intake process for dealing with complaints in writing. We also have procedures for complaints that are accompanied by voluminous material in which the nature and scope of the complaint is unclear, and for dealing with persistent complainants.

Another possible strategy for more effective use of CMC resources is to engage an external facility, such as that provided to the public sector by Smart Services Queensland, to filter out the many telephone calls that are about matters outside the CMC's jurisdiction and refer them directly to the relevant agency. However, a detailed analysis has not yet been undertaken to assess the viability and acceptability of this option.

## Information technology

Technology solutions are also being explored to minimise the resources taken up in processing complaints. There are various possible medium-term and long-term options — such as agency access to the CMC's complaints management system, COMPASS, to enable direct entry of complaints data; or a sector-wide database that makes possible 'real-time' CMC monitoring of the management of complaints by the agencies. The feasibility of these options will need to be explored. However, it is acknowledged that there are significant technical and other issues that need to be addressed.

## Education

With the increase in complaint numbers, it is important that we educate our stakeholders on precisely where our powers and jurisdiction begin and end. Although our efforts at enhancing awareness among the public and within the public sector have shown some good results, there is still room for further strategic communications to ensure that members of the public do not have unrealistic expectations of the CMC, and agencies do not misunderstand our role.

We continue to look for ways to deal with assessments more promptly in the face of limited resources and an increased workload. In particular, our aim is to respond more promptly to complaints referred to us from public sector agencies.

## MONITORING

Performing our monitoring role for official misconduct and police misconduct is another critical aspect of complaints handling. Sections 47 and 48 of the CM Act give the CMC wide power to monitor how public sector agencies, including the QPS, deal with complaints. This is done in the following ways:

- ▶ close monitoring by the CMC during the course of an investigation by an agency, including the QPS (official misconduct only)
- ▶ reviewing the finalised investigation report before any disciplinary or other managerial action is taken (official misconduct only)
- ▶ reviewing how the agency, including the QPS, dealt with the matter (or class of complaints) after finalisation (police misconduct and official misconduct)
- ▶ auditing the way the agency, including the QPS, has dealt with a complaint or a class of complaints referred by the CMC (police misconduct and official misconduct).

As a result, all agencies are aware that any matter may be subject to monitoring and audit without prior notice.

## Reviews

Reviews are an important part of the accountability mechanism that underpins the devolution principle, under which agencies are given responsibility for dealing with the majority of complaints of misconduct. The purpose of reviews is to ascertain levels of compliance with standards, and the integrity of the manner in which a complaint is dealt with.

In 2004–05, 6.3 per cent of complaints referred to the relevant agency (the QPS and other public sector agencies) to deal with were reviewed individually by the CMC.

In the first half of 2005–06 (as at 31 December) that figure was at 6.5 per cent. In 2004–05, 201 individual reviews were completed by the CMC; in 2005–06, 97 had been completed by 31 December 2005.

At the time that a complaint is assessed, the CMC decides whether the complaint should be monitored by way of a review, either before or after it has been dealt with by the relevant agency. The decision will depend on the nature and seriousness of the particular complaint.

### Review before finalisation

In some cases, we require the public official to provide the completed report on how the matter was dealt with before any decisions are made about disciplinary or managerial action. On receipt of the report, we will usually fully review the matter, including:

- ▶ the adequacy, impartiality and transparency of any investigative process
- ▶ the appropriateness of the conclusions and recommendations made as a result of any investigation
- ▶ the appropriateness of the decision whether to lay disciplinary charges or not
- ▶ where no charges are to be laid, the appropriateness of any other action taken.

The reviewing officer will examine both the investigation report and any source documents supporting the investigation. Source documents include all documentary evidence, and transcripts, summaries and/or electronic recordings of interviews conducted by the investigator with witnesses and subject officers. The purpose of examining these documents is to ensure that the interviews were sufficiently rigorous and that the investigation was conducted fairly.

Other issues examined include:

- ▶ the appropriateness of pre-investigation arrangements, including the choice of investigator and the terms of reference
- ▶ the sufficiency of the investigation report
- ▶ whether the investigation has identified any systemic failures that may have contributed to any misconduct, and made appropriate procedural recommendations to remedy them.

If we have any concerns about the process, we discuss these with the agency, and we may require the agency to make further inquiries to deal with the complaint. If that happens, we will direct the agency to provide a further report on those additional investigations.

In conducting reviews, we acknowledge that there may be various courses of action available to the public official. We look at whether the choice made is transparent, accountable, justifiable and within the range.

If we disagree with the proposed outcome, we will usually discuss the matter with the agency before we decide what further action to take.

The CMC has no power to direct an agency about what action to take if the agency does not agree with our advice. However, if we feel strongly about the inadequacy or inappropriateness of the agency's proposed action, we may assume responsibility for the investigation with a view to considering criminal prosecution or beginning official misconduct proceedings.

### **Review after finalisation**

These reviews will not take place until the agency has dealt with the complaint, an taken action to finalise the matter and reported the outcome to the CMC.

Once we receive the report on the outcome, we conduct a prompt compliance and integrity review to determine:

- ▶ the adequacy, impartiality and transparency of any investigative process
- ▶ the appropriateness of the conclusions and recommendations made as a result of any investigation
- ▶ the appropriateness of the decision whether to lay disciplinary charges
- ▶ where no charges are laid, the appropriateness of any other action taken
- ▶ where one or more charges are laid, the appropriateness of the charge/s and of the tribunal of fact to hear the charge/s
- ▶ the appropriateness of any finding and/or disciplinary sanction.

In conducting these reviews, we again acknowledge that there may be a range of courses of action available to the public official. The review looks at whether the choice made is transparent, accountable and within the range. If necessary, we will advise the public official concerning the action taken to finalise the matter.

### **Tmeliness of reviews**

After a backlog reduction project, which focused on reducing the number of matters where agencies were waiting for the CMC to review misconduct investigations they had conducted themselves, the number of such reviews still outstanding dropped from 253 in June 2001 to only 43 in May 2002. The number of reviews awaiting completion has been still further reduced, with only three reviews on hand at the end of December 2005.

As at 31 December 2005, 88 per cent of reviews had been completed within four weeks.

To make the collection and analysis of information more efficient and effective, a 'review coding instrument' has been developed. The instrument is used both for reviews of individual matters and for reviews conducted as part of audits. The instrument focuses on issues of compliance with the relevant standards and the integrity of the manner in which the complaints are dealt with.

## Further improvements of the monitoring function

We propose to enhance the monitoring function further by using the data collected by the 'review coding instrument' to produce improved and more regular periodic summary reports to agencies about any issues that come to light in the course of reviews. This will also streamline the process. Rather than writing a lengthy letter to the agencies about the outcome of every review, we will only write individual detailed letters if a particular issue warrants immediate attention; otherwise the issues will be covered in the summary report.

In addition, it is proposed to develop a coding instrument to enhance the collection and analysis of the data on the timeliness with which agencies deal with matters. This will aid in determining the reasons for any lack of timeliness and in developing strategies to rectify the problem.

The CMC is developing a more sophisticated framework (a 'watching brief') for collecting, collating and analysing data about sections of the public sector, such as the QPS, which will help us to target our monitoring, capacity-building, prevention and investigation resources more effectively. Information will be drawn from various sources, including complaints data, monitoring activities, investigations, intelligence, and a review of any relevant legislative and environmental changes.

It is intended to produce 'briefing sheets' for agencies derived from the 'watching brief' information.

## Audits

The CMC also conducts audits of complaints dealt with by agencies. These audits are on various measures including integrity, timeliness and/or compliance with particular investigative standards. Samples of complaints may be randomly selected or a target group identified. We see this as an important progression in our monitoring role.

When we decide that a particular agency or class of complaint warrants auditing, we will liaise with the agency or agencies concerned to ensure appropriate access to the relevant files and related material.

The method used reflects the type of audit. Audits concerning integrity and compliance will usually involve reviewing each of a sample of complaints. The reviewing officer examines the report of the way in which the complaint was dealt with (e.g. by investigation) and may — depending on the purpose of the audit — examine at least some of the source documents supporting the report.

We propose to enhance our audit program, by focusing rolling audits on compliance and integrity (organisational/quality assurance) of individual agencies across the public sector, including local government.

The CMC has recently conducted an audit of complaints dealt with by a major local government. From that audit, we are satisfied in general with the manner in which the council dealt with complaints, though the audit raised some issues in relation to the timely notification of complaints. These matters are to be addressed in two ways. The council will issue an 'instruction', approved by the CMC, clarifying the nature of its obligations; and the CMC, together with the council's CMC Liaison Officer and legal adviser, will deliver a joint training seminar to the council's senior managers and others.

## Quality assurance reviews

We have also conducted in-depth capacity assessments of selected agencies that have a high volume of notifiable complaints, and to which we regularly refers matters.

The aims of the these quality assurance reviews are to:

- ▶ foster the development of best practice and promote an appropriate and consistent level of dealing with and preventing misconduct across all public sector agencies
- ▶ confirm our assessment of capacity and provide constructive assistance to agencies — including, where appropriate, suggested changes to policies or procedures, resources or training within the organisation.

As part of the process, we review a sample of complaints dealt with by the agency, interview relevant staff and examine relevant policies and procedures.

The results are combined with the results of the Responding to Misconduct survey (distributed in December 2002, ongoing reviews and any other relevant information to enable us to adequately assess the agency's capacity to deal with and prevent misconduct.

Six agencies have been the subject of a quality assurance review: Queensland Health, Education Queensland, the Department of Corrective Services, the Department of Emergency Services, the Department of Employment and Training, and Brisbane City Council.

## Monitoring timeliness within the agencies

Timeliness of the resolution of complaints is also an issue for agencies. We have a process for monitoring complaints that are with agencies to deal with (and which are to be reviewed by the CMC) and are older than six months. For each agency with which our Complaints Services section has a regular liaison meeting there is a standing agenda item in relation to this category of matters. As mentioned previously, we are developing an instrument to capture information about the reasons for delay, with a view to helping agencies develop strategies to resolve complaints more promptly.

We regularly send out schedules seeking advice of the outcome of those matters referred to the agencies to deal with (other than those that warrant review on an individual basis). These include a summary of the matters outstanding after less than three months, between three and six months, and more than six months.

## Close monitoring

Close monitoring requires public officials to report to the CMC on the progress of an investigation at various times through the investigation.

This strategy is employed in circumstances where it is in the public interest for the CMC to concurrently oversee the investigation of a complaint referred to an agency, and/or where the agency requires the assistance and support of the CMC.

This close involvement of the CMC in the progress of the investigation may include one or both of the following cooperative strategies:

- ▶ providing professional and technical advice to the agency in the development of a case-management strategy for its investigation

- ▶ providing investigative, professional, technical or independent assistance or advice in the course of the investigation by the agency.

One of the possible outcomes of closely monitoring an investigation is that we assume responsibility for the investigation and complete it. This may occur where, for example, the investigation reveals evidence of misconduct that is more serious than initially reported to the CMC, and the agency does not have the capacity to deal with it.

### **Outcome advice only**

Often, when matters of suspected misconduct are referred back to agencies to deal with, the CMC seeks only to be advised of the outcome of the matter after it has been finalised. This applies to the least significant matters. Gathering this information will help us to monitor trends across the public sector, and to provide information to agencies that will help them build their capacity to prevent and deal with misconduct.

Sampling of complaints for the purpose of audits occurs within this group of matters. We have a project to augment our COMPASS database in a way that will enable more detailed and useful analysis of outcome information.

### **Complaints management by agencies**

It remains a problem for agencies to manage complaints of misconduct that also involve alleged criminal conduct, which may be investigated by the police. An attempt to address this problem by allocating a police position to the Shared Service Providers, as recommended by the audit report of the Department of the Premier and Cabinet, has so far been unsuccessful. The QPS considers that this is not the best use of its resources. Other strategies need to be developed — for example, in the longer term, empowering agencies to investigate minor criminal matters and deliver briefs directly to the prosecuting authority, in the same way that many agencies have enforcement sections to deal with breaches of the legislation for which they are responsible. In the shorter term, legislative changes may be necessary:

- ▶ to enable agencies to obtain information from the QPS during the course of a police investigation so that the agency can manage its internal disciplinary investigation and proceedings, particularly when there is a duty of care issue
- ▶ to strengthen the ability of an agency to take disciplinary action before completion of criminal proceedings, but at the same time protect the interests of the accused person in the criminal proceedings.

The CMC's partnership with Crown Law and the OPSME has been extremely important in attempting to ensure consistency of approach and advice given to the public sector, so that the regime under the CM Act can be given full effect. However, there have been concerning instances in which advice given by internal agency legal officers, human resource managers and private law firms has led to situations that have the potential to undermine that regime. The different sources of advice have resulted in striking inconsistencies and inequities in the way in which agencies deal with matters.

The CMC, in consultation with OPSME and Crown Law, will endeavour to develop strategies to combat this problem. It may well be prudent to tie agencies to obtaining advice from Crown Law in relation to issues arising under this regime.

## CAPACITY BUILDING

The CMC has a legislative responsibility to raise integrity and reduce the incidence of misconduct in the public sector. An important aspect of this responsibility is helping to increase the capacity of agencies to deal effectively and appropriately with misconduct while itself continuing to investigate cases of serious misconduct.

The CMC fulfils its capacity-building responsibilities through a range of activities and projects, delivered under programs that include Resource Development, Outreach and Coordination. The programs are not mutually exclusive, and activities may fall under more than one program.

Deficiencies in capacity to prevent and deal with misconduct often come to light in the course of the reviews and audits that are carried out to monitor compliance and integrity. In addition, we continually receive ad hoc requests for advice on how to deal with complaints referred to agencies, and on a range of prevention issues. This information is taken into account in developing our capacity-building projects and activities.

In recognition of the increasing demand from the public sector for workshops and training in preventing and dealing with misconduct, the CMC is reassessing its approach to education and training, with a view to establishing a more formal program. Options being considered include working with training providers such as the Institute of Public Administration to develop a widespread program across the public sector. The CMC is consulting with like agencies that carry out training, both in Queensland (e.g. the Queensland Ombudsman and Crown Law) and in other jurisdictions (e.g. the Independent Commission Against Corruption in New South Wales), to develop the best model for delivering programs and activities such as Facing the Facts workshops, Fraud and Corruption Control workshops and regional visits.

It is our intention to provide an online learning program based on our successful publication *Facing the facts: dealing with suspected cases of misconduct in the public sector*. However, technical and other difficulties have caused us to suspend this project pending the development of a long-term education and training strategy. Once this strategy has been formulated, a decision will be made about the best way of delivering this training.

The CMC's capacity-building efforts to date have focused primarily on developing the capacity of agencies to handle investigations and other ways of resolving complaints (including by producing *Facing the facts*). We propose now to focus more attention on other aspects of dealing with misconduct within the public sector, such as proper management of whistleblowing and disciplinary proceedings (show cause proceedings) and appeals — working in partnership with other key agencies such as the Queensland Ombudsman, Crown Law, OPSME and the Department of Industrial Relations. This does not mean, however, that we will abandon the more established aspects of our capacity-building activities.

The range of capacity-building strategies, activities and projects which we have used and will continue to use are set out below.

## Developing resources

One major objective is to produce resources such as research papers, guides, toolkits, training materials, manuals, guidelines, articles and advisory pamphlets on preventing and dealing with misconduct.

The CMC works with agencies to determine the areas of greatest need and to produce resources that increase their capacity to prevent and manage misconduct — either independently or jointly with Queensland or interstate. We also adapt material already produced by like agencies.

## Dealing with complaints of misconduct

One of the first projects was to develop guidelines and a set of standards for the public sector in relation to dealing with complaints of misconduct. *Facing the facts: A CMC guide for dealing with suspected official misconduct in Queensland public sector agencies* was first published in March 2004. The guide initially consisted of nine modules:

- Module 1, 'What does the CMC do with complaints about your agency?'
- Module 2, 'A CEO's reporting obligation'
- Module 3, 'Managing a matter referred by the CMC'
- Module 4, 'Responsibilities of the investigator'
- Module 5, 'Conducting an investigation'
- Module 6, 'Gathering evidence'
- Module 7, 'Gathering oral evidence — interviewing'
- Module 8, 'At the end of the investigation'
- Module 9, 'Managing the impact of an investigation'

An index, an investigation checklist (added to Module 8), Module 10 ('Considering prevention opportunities') and Module 11 ('A troubleshooting guide') were later launched at a CMC Liaison Officers Meeting. A further module, specifically directed to the local government sector, is expected to be released later this year. Additional modules and updates will be developed as needs are identified.

In its last review, the committee recommended that the CMC continue to take steps to minimise the impact of its investigations on individual subject officers, complainants, and agencies. Chapter 6 of this submission outlines the strategies used in CMC investigations to achieve this. In relation to matters dealt with by the relevant agency, Module 9 of *Facing the facts* provides guidance to public sector agencies (and the QPS) on how to minimise such impacts.

## Conflict of interest

The CMC and the New South Wales Independent Commission Against Corruption joined forces to develop best-practice guidelines for managing conflict of interest in the public sector. The catalyst was the OECD's document *Guidelines for managing conflict of interest in the public service*. *Managing conflicts of interest in the public sector: Guidelines*, supplemented by a *Toolkit*, was published in early 2005, and was the first joint CMC/ICAC publication. It incorporates many practical examples of policies, procedures, checklists and pro formas. Workshops to assist agency managers have also been held to promulgate the publication.

This innovative suite of advisory guidelines was recognised internationally with requests to showcase them during 2005 at the 6th Global Forum on Reinventing

Government and the 4th Global Forum on Corruption Prevention. They also formed the basis for a series of seminars coordinated by the West Australian Crime and Corruption Commission.

## **Fraud and corruption control**

In March 2005, the CMC released a practical guide for fraud and corruption control in the public sector. This followed a direction from the Premier that agencies report on the implementation of effective fraud strategies. The publication, *Fraud and corruption control: guidelines for best practice*, is a key advisory document and significant resource publication containing best-practice guidelines for the development of corruption and fraud control strategies within the Queensland public sector. It outlines a model strategy consisting of ten basic elements and takes into account the Australian Standards on Fraud and Corruption Control, Corporate Governance, and Risk Management. For many agencies, this integrated strategy represents a new approach to managing fraud and corruption risks.

A structured extension and support program has also been developed. This involves a range of activities including workshops, liaison meetings, information releases and articles, strategic conference and seminar presentations, regional advisory outreach programs (including Indigenous areas) and responses to requests for assistance from individual agencies. Supporting materials have also been developed, to provide implementation examples.

As part of this extension strategy, a Senior Practitioners Workshop was held in April 2006 to reinforce the underlying principles of fraud and corruption control and to highlight the progress that Queensland agencies have made towards implementation. The workshop was designed for staff with responsibility for strategic planning, corporate governance, change management, corporate integrity, organisational accountability, organisational capability, and other strategic roles that have a direct executive influence in shaping policy and corporate culture. The workshop was attended by 81 people including some from as far afield as Townsville, Rockhampton and the Whitsundays. Attendance surpassed expectations with 23 potential registrants remaining on the final waiting list.

## **Building Capacity series**

The Building Capacity Series consists of short papers on a range of misconduct risk areas. Their aim is to provide an authoritative misconduct prevention advisory resource, and to help agencies formulate strategies to minimise the risks associated with those areas.

Papers have recently been published on the following topics:

- ▶ regulatory risks
- ▶ information security
- ▶ creating a climate conducive to misconduct reporting
- ▶ the use of government corporate cards
- ▶ integrated fraud and corruption control strategy.

Topics on which publications are yet to be completed include:

- ▶ sponsorship
- ▶ keeping codes of conduct relevant
- ▶ gifts and benefits.

## CMC website information

A 'best practice' advisory centre has been developed on the CMC website to provide misconduct prevention information and resource materials on a range of misconduct issues. The first series of materials on key misconduct risk areas is now complete. This incorporates information resources and downloadable items, each with its own content description and deep linkages or availability details, to achieve maximum efficiency and user-friendliness. There are also links to external sources of information.

Content areas currently covered include:

- ▶ gifts and benefits
- ▶ conflict of interest
- ▶ disposal of scrap and low-value assets
- ▶ identity fraud
- ▶ information security
- ▶ purchasing and tendering
- ▶ sponsorships
- ▶ use of official resources.

Content areas that we plan to add in the future include:

- ▶ risk management
- ▶ codes of conduct
- ▶ internet and email
- ▶ integrated fraud and corruption control strategies
- ▶ recruitment and selection
- ▶ integrity in leadership
- ▶ building ethical workplace cultures.

## Electronic newsletter

The CMC has developed an electronic newsletter — the 'e-newsletter' — that is sent to all CMC Liaison Officers and many other stakeholders both within and outside the public sector. The newsletter provides information about upcoming events, discusses case studies, and gives advice about specific issues of concern in advance of their inclusion in *Facing the facts*.

## Regular liaison meetings

Liaison meetings are held weekly with the Ethical Standards Command of the QPS, and monthly with eight other major agencies. At each of these meetings discussions are held about current complaints being dealt with by the agencies and any issues that the CMC or the agency has in relation to them, as well as any other issues of concern. There is also discussion about emerging trends.

## Protocols

In a number of sections of the public sector, there are instances of overlapping jurisdictions which require effective management to ensure the best outcomes and use of resources.

For example, the CMC is currently developing protocols with the Commission for Children and Young People and Child Guardian and the Department of Child

Safety to manage the overlapping jurisdictions in dealing with complaints about provision of services to children. We propose also to develop protocols between the various key agencies in the health sector.

## Outreach activities

Our objective is to deliver advice and assistance to meet the needs of agencies across the state through various outreach activities. We also give presentations to professional bodies and community groups.

## Regional visits and other seminars, workshops and presentations

The CMC recognises that agencies in regional and rural areas, including local councils, face particular difficulties in dealing with and preventing misconduct. Factors such as the size of the community in which these agencies operate, and their distance from other communities and major metropolitan areas, contribute to these difficulties.

To address these problems, the CMC conducts regional visits to rural and regional centres throughout Queensland. Places we have visited since the inception of the regional initiative program include Cairns, Karumba, Mount Isa, Townsville, Mackay, Rockhampton, Bundaberg, Toowoomba, Roma, Longreach, Wide Bay, Logan, Biggenden and Inglewood. We will visit the Sunshine Coast before the end of this financial year.

Some visits are for a day or so, while others may be for a week. The major visits include:

- ▶ a full-day seminar for local government, focusing on the obligations under the CM Act, complaints management and prevention, and specific issues of concern
- ▶ a full-day seminar for the public sector, generally about complaints management, based on *Facing the facts* and focusing on significant prevention issues such as managing conflicts of interest
- ▶ meetings with regional agency officers, the local police and other stakeholders such as Indigenous bodies, local legal aid agencies and law associations
- ▶ strategic seminars, workshops and presentations for agency staff at all levels.

Papers are also presented at larger conferences on public sector misconduct.

Many Facing the Facts workshops have been delivered during regional visits and in Brisbane to stakeholders at various levels in a wide range of public sector agencies. The workshops give us the opportunity to enhance awareness and understanding of the roles and obligations of the CMC and public sector managers under the regime of the CM Act, and to build capacity within agencies to deal effectively and appropriately with misconduct. Also, and most importantly, the workshops allow us to attain a better appreciation of the issues that confront the agencies, through our interactions with officers of the various agencies.

The workshops have been well supported, with hundreds of people attending overall. Analysis indicates that the vast majority of workshop participants have been very satisfied with the content and delivery. A number of comments suggest that the presence of a senior CMC officer, such as the Assistant Commissioner, Misconduct and the Director, Complaints Services, is significant. The attendance of the director is seen as an indicator of the level of importance we place on the

information being conveyed. It also allows for authoritative answers to be given to some of the difficult questions and issues raised by the attendees, who are often in pivotal roles within a public sector agency in terms of misconduct jurisdiction.

The use of case studies in the workshops has been a great success, particularly when presented by CMC officers with first-hand knowledge and a practical understanding of these matters. The workshops are resource-intensive but continue to prove very valuable in getting the right message to managers and staff in influential positions within the public sector.

## Supporting the Corruption Prevention Network Queensland

The CMC facilitated the development of the Corruption Prevention Network Queensland (CPNQ), a network of officers drawn mainly from the public sector with an interest or involvement in misconduct and corruption prevention. The Commission has agreed to provide \$1750 a year for three years for the basic running costs of the CPNQ, to ensure that the group remains viable without needing to seek corporate memberships, and remains available at no cost to anyone interested and eligible to join. Misconduct prevention officers ensure that there is a continued CMC presence on the CPNQ organising committee, and at events conducted by the CPNQ.

The CMC also agreed to fund the redevelopment of the CPNQ website and provided a one-off grant of \$4950 to enable this work to be completed and the website launched in March 2006.

## Building partnerships

Key agency partnerships are essential to the CMC's capacity-building function. Regular liaison meetings are held with a number of those key agencies. We consult, liaise and work cooperatively with many agencies and key stakeholders such as the Integrity Commissioner, the Office of Public Sector Merit and Equity (OPSME), Crown Law, the Queensland Audit Office and the Queensland Ombudsman.

We participate in a number of 'key agency' meetings, including the following:

- ▶ The Public Service Commissioner, the Crown Solicitor and the Director, Complaints Services meet quarterly. The focus of this group is to identify and discuss issues of overlapping jurisdiction and mutual interest and concern, including matters raised by agencies in which the members of the group all have a role in providing guidance or advice, with a view to ensuring consistent and effective assistance and advice to the public sector about dealing with misconduct. It is important that there is consistency in the guidance and advice given by the three agencies to the sector. An example of the cooperation is *Facing the facts*, which has been approved by both Crown Law and the OPSME. Any advice given by either of those agencies will be consistent with that contained in *Facing the facts*.
- ▶ Quarterly meetings are held with the Ombudsman's Office, again to discuss and manage matters of mutual interest and to achieve best use of resources. Many complainants take their matters both to the Ombudsman and to the CMC. There are also instances in which the CMC gives capacity-building (including prevention) advice that may overlap with the Ombudsman's role to make recommendations about administrative matters.
- ▶ Regular meetings are held with local government stakeholders.

## Twice-yearly meetings of CMC Liaison Officers

All departments and most major statutory authorities, as well as the vast majority of councils, have an officer dedicated to liaison with the CMC. In the larger agencies the liaison officer is often the manager of the unit responsible for ensuring that the agency appropriately prevents and deals with misconduct.

Meetings for agencies' CMC Liaison Officers, which are held twice a year, remain an important opportunity for us to convey information about recent initiatives, issues of concern and specific topics in focused and detailed sessions.

## Visits to directors-general and CEOs

In an important outreach activity, the Chairperson and senior CMC officers visit selected directors-general and chief executive officers to discuss matters of mutual interest. Visits that have prospects of generating the best outcomes for the CMC, the agency and the public sector in general are the focus. They involve agencies that are best able to put CMC initiatives into practice, those that have responsibility for the management of issues across a range of agencies, or those that are of particular significance to the CMC because of the number of complaints generated within the agency.

## Misconduct prevention advice

Capacity-building activities have a strong focus on prevention, and the CMC continues and extends the work of the CJC in the area of helping agencies prevent misconduct.

Over the past two years, we have collaborated on misconduct prevention projects with public sector agencies such as the QPS, the Department of Corrective Services and the Queensland Ambulance Service, as well as universities and local government consultative groups and forums. We have helped agencies develop corruption risk assessments, and integrate misconduct prevention strategies and ethics training packages.

Liaison contacts are maintained with a number of professional associations where the members perform prevention-related activities, or where there is a mutually beneficial relationship between the professional association and the CMC.

The CMC provides ad hoc advice to agencies about dealing with specific complaints, and general strategies for preventing and dealing with misconduct. On average, prevention advice is provided on 175 occasions during any year.

Recent prevention advice has covered such topics as:

- ▶ purchasing and procurement policies and procedures
- ▶ the development of misconduct prevention strategies
- ▶ conflict of interest situations
- ▶ fraud prevention
- ▶ development and/or revision of codes of conduct.

## Prevention input in complaints assessments and during misconduct investigations

Although public sector agencies have been taking more responsibility for dealing with their own workplace misconduct in recent years, there are situations where

the CMC itself is the body most suited to investigate some more serious matters, or where the CMC's special powers or expertise are required. In these instances, the CMC uses multidisciplinary teams comprising police, civilian investigators, financial analysts, lawyers, intelligence analysts and support staff. A focus common to all investigations is to determine any systemic issues that give rise to prevention recommendations.

Often, the members of the multidisciplinary teams will themselves pinpoint the issues and make recommendations. In the more complex cases, however, staff who have the specific role of providing prevention advice are briefed early in an investigation so that they can provide complementary input to an investigation report or make early recommendations to the agency concerned. In this way, the agency can take remedial action at the conclusion of the investigation, without having to await the outcome of any disciplinary or court action.

If any significant prevention issue is identified at the time of the assessment of complaints, we offer advice accordingly. Similarly, if in the course of the reviews of individual matters dealt with by agencies any systemic issues that require a prevention response are identified, we make recommendations concerning those issues.

## **Conducting misconduct prevention system reviews**

System reviews bring to light areas within organisations that are susceptible to misconduct risks. The CMC's misconduct prevention staff have expertise in discerning how systems may diverge from best-practice standards, and how current systems can be improved to minimise the recurrence of misconduct. System reviews may act as a major catalyst for organisational change and improvement.

The reviews are usually conducted collaboratively with the agency concerned, and help build the CMC's relationship with that agency. Benefits they yield include professional expertise, genuinely helpful assistance, a focus on the agency, accountability for its integrity systems, and the preservation of the agency's self-esteem. Some examples are given below.

▶ *QBuild*

The CMC received allegations that two officers from QBuild's Inala Office had falsified accounting records, paid for goods and services before they were received, and shown favour to a western Brisbane painting firm for work undertaken in the Inala Urban Renewal Project. In response to these allegations, a CMC investigation was undertaken. Concurrently, we conducted a misconduct prevention systems review of the internal fraud prevention controls within the QBuild environment. This brought to light a range of risk areas, and the CMC made recommendations to address these risks.

▶ *Department of Justice and Attorney-General (JAG)*

The CMC received a complaint from the Department of Justice and Attorney-General (JAG) alleging potential favouritism and unauthorised release of information regarding the purchase of a Storage Area Network (SAN). Prevention staff carried out an urgent review of JAG purchasing/tendering policies and procedures to complement the CMC investigation that took place. Expert advice was required within a very short timeframe, since progress on current purchasing projects had ceased and JAG had requested assistance in recommencing procurement activities as soon as possible. Professional advice on the probity requirements for IT procurement and best-practice purchasing procedures was provided immediately.

## RESEARCH ON MISCONDUCT ISSUES

The CMC conducts research into misconduct trends affecting the public sector. Current and recent research includes the following:

### State government

#### Profiling the Queensland public sector

In June 2004, the CMC published *Profiling the Queensland public sector*, a companion volume to the ICAC's *Profiling the New South Wales public sector*, published in 2003.

This landmark report represents the cooperation of the 234 Queensland public sector agencies — including State Government departments and agencies, local councils, universities and statutory boards and authorities — that took the time to participate in the CMC's Responding to Misconduct survey. The survey was designed to yield the sort of information that the CMC needs to help build the capacity of Queensland public sector agencies to deal with and prevent misconduct.

The information contained in this report provided individual agencies with information about their own misconduct and corruption risks and, importantly, the risks faced by similar organisations and the prevention strategies they use. The survey included:

- ▶ perceptions as to what are the most significant types of misconduct in the Queensland public sector (e.g. fraud, misuse of public resources or improper use of information)
- ▶ an examination of the types of activities that might put staff at a higher risk of exposure to misconduct
- ▶ the prevalence of misconduct strategies (e.g. agency-specific codes of conduct; gifts and benefits policies; contracting and procurement procedures).

We used the results of the research to better target our publications and advisory papers. Thus we have designed advisory materials to tackle the issues identified in the survey as causing public sector agencies the most concern. For example:

- ▶ the *Fraud and corruption control guidelines* were developed partly in response to the findings that fraud was the type of misconduct nominated as potentially the most damaging, and that only 26 per cent of agencies had fraud control plans in place.
- ▶ *Cyber traps: an overview of crime, misconduct and security risks in the cyber environment* (March 2004) is designed to target the emerging risks associated with communication technology
- ▶ *Facing the facts: a CMC guide to dealing with allegations of official misconduct in public sector agencies* (also March 2004) aims to help public sector agencies respond to reports of misconduct arising within their own agency, an area identified by many agencies as an area of risk.

We also use the survey results to assess the capacity of particular agencies to prevent or to deal with misconduct. CMC staff attending regional visits access the survey results of public sector agencies in the region to determine what assistance, if any, they can provide to those particular agencies. In addition, the survey results

are combined with complaints trend analysis in the briefing sheets prepared for meetings with senior management of public sector agencies.

The ICAC's and CMC's profiling surveys have since been replicated by the Crime and Corruption Commission of Western Australia; and the CMC and the ICAC have agreed to repeat the survey in their respective jurisdictions in 2006–07. This will help us to develop collaborative projects that will address the needs in both of our jurisdictions.

## Public perceptions of the public service

Regularly since 1991, as reported in Chapter 7, the CMC has conducted six statewide surveys to assess public perceptions of the QPS. Since 1999 we have also included sections in the survey to assess public perceptions of public sector employees — that is, those working for government departments (e.g. Health and Education) and local government. We now have data about public attitudes towards these two groups of employees from three consecutive surveys.

In the latest survey, conducted in 2005, responses were received from 1500 members of the community about a range of issues relevant to public perceptions of public service employees, including:

- ▶ their general perceptions of government employees' behaviour, including important concepts such as honesty and corruption
- ▶ their reported experiences of improper behaviour by government employees and the nature of the behaviours witnessed (e.g. misuse of public money; racist language or behaviour)
- ▶ their experiences of making a complaint about a public service employee, including their satisfaction with and confidence in the process.

We are currently analysing the survey data, assessing current attitudes and determining trends over time. We will also identify which subgroups of the community hold particular views about public service employees. This information could be used to develop targeted interventions to address particular concerns if necessary. We will be releasing a report on these findings within the next six months.

The surveys relating to public perceptions of local government employees are discussed later in this chapter (page 81).

## Whistling while they work

During 2004 there were discussions between the CMC and Griffith University's Key Centre for Law, Integrity, Ethics and Governance about developing a deeper and broader research project into best practice in whistleblower policy, practices and management. The initial catalyst was the Key Centre's discussion document *Building positive reporting climates in the Queensland public sector: five current problems*. This project subsequently expanded to include 14 integrity-related organisations throughout Australia and was successful in obtaining ARC supplementary funding for a substantial three-year research project with the working title *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*.

The first survey instrument for public sector agencies across Australia was distributed to agencies in late 2005. Development of other segments of the

research program, such as the individual officer survey, continues. The many subsections of this major project are scheduled for completion by June 2008.

## Local government

The local government sector has become an increasingly important focus of the CMC's function to improve the integrity of the public sector.

It is acknowledged that CEOs in this sector are in a difficult position, given their obligations under the CM Act, the relationships they have with the mayor, councillors, council staff and the community, and the impact of the councillors' code of conduct.

The CMC invests considerable resources in strategies directed specifically to the local government sector.

## Information kits

After the March 2004 local government elections, the CMC provided Councillor Information Kits containing misconduct-prevention advisory brochures on key local government issues. These kits were distributed to all 1250 local government councillors in Queensland.

## *Facing the facts: local government module*

In recognition of the unique challenges for the local government sector in dealing with official misconduct, the CMC has developed a specific module of *Facing the facts* devoted to issues affecting local government.

There are approximately 175 local governments in Queensland, of varying capacity and complexity. There are also 100 or more controlled entities of local government with widely diverse functions, making the task of providing a one-size-fits-all module challenging.

Requirements under the *Local Government Act 1993* (LGA) with respect to the roles of the CEO, mayor and councillors and the closeness of the community/government/management interface in local government, present unique challenges that require consideration when dealing with official misconduct in local governments.

Official misconduct in local government relates to both elected members (councillors, including the mayor) and council staff. However, the definition of official misconduct has a broader application for council staff than for elected councillors. It is important to be clear about this difference when dealing with possible official misconduct in local government.

The module has been prepared in consultation with representatives from local government, relevant state government departments and agencies, and local government representative bodies, and is designed to help those people who are responsible for identifying, reporting and/or dealing with any matter of suspected official misconduct primarily within a council. In particular the module is designed to assist the CEOs (and their delegates), who have specific responsibility under the CM Act, and senior managers. It will also help mayors and councillors to understand the obligations placed on their CEO and senior managers.

## Specialised advisory and resource support

Apart from the capacity-building and complaints-management assistance given to the public sector generally, there is a particular focus on assistance to local government.

The specialised advice and resources that the CMC provides to local councils covers particular areas of concern, such as:

- ▶ gifts and benefits
- ▶ whistleblowing and misconduct reporting systems
- ▶ purchasing and procurement policies and procedures
- ▶ conflict of interest situations and material personal interests
- ▶ development and/or revision of codes of conduct
- ▶ development of misconduct prevention strategies
- ▶ fraud and corruption prevention and control
- ▶ ethical decision-making training (The award-winning *Grassroots/Turf it out: an ethical decision making training resource* was particularly developed for use in local government situations, especially to provide an easily usable resource in rural and remote locations.)
- ▶ disposal of assets
- ▶ regulatory risks.

## Model code of conduct

Legislation came into operation in May 2005 requiring that councils adopt a code of conduct for councillors from 1 March 2006. In view of the significance of the code in setting ethical standards and a misconduct prevention framework, the Department of Local Government, Sport and Recreation (DLGPSR) and the CMC cooperated closely in developing a model code. The DLGPSR decided to undertake a statewide training program in September–October 2005 to assist local governments in meeting these statutory requirements. Due to the CMC's leading role in misconduct prevention, the DLGPSR has sought support from the CMC to maximise the effectiveness of the program. Accordingly, a prevention officer was assigned to provide prevention-oriented support to the department in developing and providing training on the model code of conduct for local government councillors. The prevention officer gave 23 of the 40 presentations conducted for local governments across Queensland. Participants rated these workshops highly.

## Outreach and liaison

Liaison activities allow general misconduct-prevention advice to be disseminated to local government officials, both formally and informally, through:

- ▶ responses to ad hoc inquiries from local government officials
- ▶ targeted presentations, training or similar activities (e.g. corporate governance; risk management; fraud and corruption control strategies)
- ▶ activities to provide information to the general public and public interest groups.

Current liaison activities that involve local government concerns include:

- ▶ sponsoring a quarterly liaison meeting between the CMC, the Ombudsman, the the Queensland Audit Office and DLGPSR local government officials

- ▶ attending meetings of the Local Government Managers Australia, the Local Government Association Queensland, and the Local Government Internal Auditors Network
- ▶ sponsoring a 'One Stop Integrity Shop' display at the LGAQ and LGMA annual state conferences, sometimes in association with other integrity agencies such as the Queensland Audit Office and the Ombudsman's Office.

### **Research project: public perceptions of local government**

The CMC's regular public attitudes survey (discussed previously) assesses the views of Queenslanders about government employees working for town, city or shire councils (excluding state public service employees and police officers). The 2005 survey has responses from 1500 respondents statewide about:

- ▶ their general perceptions of local government employees' behaviour, including honesty and corruption
- ▶ their reported experiences of improper behaviour by local government employees and the nature of the behaviours experienced (e.g. favouritism; bribery; release of confidential information)
- ▶ their experiences of making a complaint about a local government employee, including their satisfaction with and confidence in the process.

We will release a report later this year which assesses the current perceptions of Queenslanders about local government employees, as well as any significant changes in perceptions over time, and pinpoints any subgroups of the community that hold particular views about local government employees. Local governments and/or the agencies that handle complaints about local government employees (including the CMC) may be able to use this information to improve their services.

### **Other local government research**

The CMC also identifies misconduct trends and key areas of risk in the local government sector through the analysis of CMC complaints.

### **Frivolous and vexatious complaints about local government**

Concerns have been expressed about frivolous, vexatious and false complaints and their impact, particularly on small communities. Inevitably, they seem to become public knowledge and continue to have adverse effects on the individual councillor and the council long after they have been found not to be substantiated.

There has been discussion about the strategies that could be employed by councils, both internally and within the community, to combat the perception of 'guilty until proven innocent'. It is difficult to find the right balance. On the one hand, individuals need to be protected against frivolous, vexatious and false complaints and their unwarranted consequences; but, on the other hand, members of the community with honest (albeit sometimes mistaken) concerns that need to be addressed must not be prevented from coming forward.

The CMC has met with the Local Government Association of Queensland (LGAQ) to discuss these concerns, and proposes a specific project in the coming financial year to address these issues. It will consult with the LGAQ and the Local Government Managers Australia and other stakeholders.

In the lead-up to the 2004 local government elections, the CMC implemented a strategy to reduce the likelihood of false, frivolous and vexatious complaints that

waste CMC resources and damage people's reputations. This successful strategy was first delivered in the lead-up to the March 2000 local government election, after extensive consultation with local government stakeholders. It involves:

- ▶ conducting a media campaign before the election to warn candidates not to use the CMC for politically motivated complaints
- ▶ raising public awareness that false, frivolous and vexatious complaints can lead to a penalty
- ▶ communicating that prosecutions for false, vexatious and frivolous complaints will be pursued.

We envisage using the same strategy before the next local government elections.

## **RELATIONSHIP WITH INDIGENOUS COMMUNITIES**

The CMC helps Indigenous communities by building their capacity to deal with misconduct and involving them in projects that affect them. The Indigenous community is an important stakeholder for the CMC. For example, Indigenous people are often involved in research projects (e.g. Coordinated Responses for Children) or public inquiries (e.g. Inquiry into Abuse of Children in Foster Care). The CMC also receives a significant number of complaints from Indigenous people, most often relating to their interactions with police, or to complaints of fraud or financial mismanagement in Indigenous councils or agencies.

### **Working with our partners**

Capacity building for Indigenous councils — both to prevent and to deal with misconduct — continues to be a focus for the CMC. We provide assistance to the DLGPSR in improving the governance of Indigenous communities. CMC Indigenous liaison and education officers have recently completed a program of training in good governance (including code of conduct training) for Aboriginal councils across Queensland. This program was conducted in collaboration with DLGPSR. In March 2005, the officers embarked on the second phase of the project, to deliver the training to Torres Strait Island councils.

### **Quarterly Liaison Meeting on Indigenous community governance**

In March 2006, the CMC hosted the first of a proposed quarterly series of meetings with the key agencies involved in improving the governance of Aboriginal and Torres Strait Island communities. The group of agencies includes the Queensland Ombudsman, the Queensland Audit Office, the Department of Aboriginal and Torres Strait Islander Policy, the DLGPSR, and the Department of the Premier and Cabinet (Social Policy Unit).

The aim of the meetings is to share information on our current projects, identify opportunities for collaboration, and ensure that communities are not confronted with an uncoordinated range of different training and capacity-building initiatives.

Major items of discussion at the first meeting included the Torres Strait Islander council training to be undertaken by the CMC officers and the need for follow-up training to the Aboriginal and Islander councils over the next year or so; and the need for Indigenous officers to help the Ombudsman's office convert their training material to a format appropriate for presentation to these communities.

All agencies agreed to work together to build the integrity of Aboriginal and Islander councils. The next meeting will be hosted by the DLGPSR in May in order to ensure that agencies can plan their 2006–07 business activities in a coordinated manner.

## Indigenous engagement strategy

Effective engagement with the Indigenous community is a priority for the CMC, and in 2005 we decided to review our engagement strategy. In December, the Indigenous Consultative Committee was disbanded so that its work could be replaced by the following more comprehensive range of strategies:

- ▶ regional visits
- ▶ community liaison by Indigenous Liaison Officers
- ▶ CMC representation at NAIDOC
- ▶ CMC Liaison Officer meetings
- ▶ Across-Government Indigenous Governance Committee
- ▶ attendance at the Indigenous Police Review and Reference Group
- ▶ attendance at the Community Consultative Committee for Justice Entry Program
- ▶ attendance at the Brisbane Indigenous Employment Coordinators Network meeting
- ▶ informal contacts with the Cultural Advisory Unit at the QPS
- ▶ maintenance of informal contacts with key members of the Indigenous community by Indigenous Liaison Officers and Indigenous Complaints Officers.

The CMC's engagement strategy for Indigenous matters also includes the following internal activities:

- ▶ Indigenous Complaints Assessment Meetings (ICAM)
- ▶ regular monitoring of Indigenous complaints
- ▶ Research and Prevention/Complaints Services meeting
- ▶ Indigenous Liaison Officers' attendance at Research and Prevention team meetings
- ▶ Indigenous issues highlighted in research proposals and research plans
- ▶ procedures for ensuring that information from regional visits and community visits is passed on to relevant areas within the CMC
- ▶ Indigenous Liaison Officer involvement in induction training for CMC staff
- ▶ informal liaison between Indigenous Liaison Officers and Indigenous Complaints Officers.

## ACCEPTANCE OF DEVOLUTION IN THE PUBLIC SECTOR

The regime guided by the devolution principle has been in effect for a comparatively short time, in the context of the evolving integrity systems within Queensland since the Fitzgerald Commission of Inquiry.

Of necessity, an important initial focus of the CMC has been on establishing awareness, understanding and acceptance within the public sector of the responsibilities of public sector agency managers. We have made significant

progress in this area, but a lot more work is required; and even more work is needed to convince individual complainants of the value of devolution.

We support devolution as providing the most effective mechanism to produce a stronger culture of integrity within the public sector, and thus reduce the incidence of serious misconduct. However, measuring its success is not straightforward.

One of the possible indicators that could be used is public confidence in the public sector. In our monitoring, we have found only a very few matters that have been dealt with unacceptably by the agencies to which responsibility was devolved; but even isolated cases have the potential to undermine the confidence of members of the public, managers and public sector staff alike. Nonetheless, public confidence in the public sector, as measured by a survey of public satisfaction in the process and resolution of complaints (and referred to earlier in this chapter), remains high.

Another possible measure is the existence of effective management practices such as risk management, fraud and corruption control. The presence of effective management practices can be established through surveys, integrity audits and/or quality assurance reviews, all of which we employ. We are continuing to enhance and refine our monitoring regime to enable us to better measure the effectiveness of devolution.

On the basis of action taken by the CMC and the public sector so far, we can say that there has been a solid start to the devolution process. We will continue to work collaboratively with agencies to create optimum conditions for making devolution effective in achieving the purposes of the Act.

(See Chapter 7 for information on the CMC's Devolution Project, which aims to re-examine the management of complaints within the QPS and the role of the CMC in overseeing the QPS.)

## Chapter 6: Investigating serious misconduct

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**This chapter focuses on the CMC's activities and achievements in the area of misconduct investigations. It explains the strategies we adopt, and the measures we take to ensure that our strategies are timely, cost-effective and sensitive to the impact on others.**

### OVERVIEW

While we urge public sector agencies to take greater responsibility for dealing with their own workplace misconduct, at the same time we recognise that there are times when it is preferable for an independent body such as the CMC to conduct the investigation.

The CMC is uniquely positioned to investigate serious and complex matters, when required, given that other agencies do not have our special powers or expertise. We concentrate our efforts on matters such as major fraud within government agencies, drug-related police corruption and sensitive political matters. A successful conclusion to a CMC investigation may be the bringing of criminal charges, or, just as importantly, the clearing of a person's name or the restoring of public confidence in a public sector agency. The independence of the CMC means that no partisanship, political or otherwise, will influence any investigation or its outcome.

### INVESTIGATION STRATEGIES

We use multidisciplinary teams to investigate serious misconduct. These teams comprise police, investigators, financial analysts, lawyers, intelligence analysts and support staff. As soon as possible in an investigation we brief prevention staff so that they can alert the agency concerned of the need for any remedial action. In this way, the agency can take remedial action without having to await the outcome of any disciplinary or court action.

We conduct two types of investigation:

- ▶ proactive investigations — these typically involve identifying targets through analysing complaints, intelligence and information; operational strategies are then designed around these target
- ▶ reactive investigations — these are conducted in response to specific complaints relating to a particular incident or course of conduct.

### Covert techniques

As detailed in Chapter 2 of this submission, we have a covert investigative capacity, which includes the use of surveillance, listening devices and covert operatives. These techniques may be used in investigating any form of alleged misconduct. We also have the power to conduct investigative hearings to which witnesses may be summoned to give evidence on oath concerning the matter under investigation, and the power to require a person to give information on oath in an interview.

## TI power

Our misconduct investigations, as with our crime investigations, continue to be hamstrung by the lack of the TI power. A number of investigations have not been able to be advanced because of our inability to access powers available to other corruption-fighting bodies. In those rare circumstances where assistance can be sought from federal agencies because their jurisdiction is also invoked, we rely completely on whether those bodies wish to continue their involvement. There have been occasions where the other agency was not able, or prepared, to continue, and consequently our investigations had to be truncated.

## Public hearings

In some cases, complaints or issues brought to our attention involve wide-ranging allegations that have the potential to reduce public confidence in fundamental systems of government. Often in these cases there are numerous stakeholders who can provide important evidence on the conduct of individuals and perceptions on the processes adopted within the system. Such matters warrant the consideration of public hearings.

The holding of public inquiries for misconduct investigations has a twofold benefit:

- ▶ It allows a wider gathering of evidence on which findings and recommendations can be based than may usually be acquired during a normal investigation.
- ▶ It allows justice to not only be done but also be seen to be done, with the public being involved in the process of reducing corruption and restoring confidence in the system.

With the exception of the TI power, the CMC is not seeking any further investigative powers.

## Intelligence gathering and target development

The CMC's Strategic Intelligence Unit (SIU) helps the multidisciplinary teams target investigations. It also ensures that information relevant to the jurisdictions of other agencies is passed on to those agencies without delay, and facilitates the cross flow of information where investigations may touch on different aspects of the CMC's jurisdiction.

Intelligence and complaints received about individuals who are employees of the QPS, public sector, statutory authorities, universities, local authorities, courts, prisons and elected officials are assessed and analysed for referral to misconduct investigative units. For example, we may receive information from the Commission for Children and Young People and Child Guardian in relation to suspected child sex offenders and allegations of misconduct by state public sector officers in carrying out their duties. We assess such information and, when appropriate, prepare intelligence reports for dissemination to the relevant QPS investigative team or CMC complaints unit.

To give an example of how our work can trigger a CMC misconduct investigation, in 2005 we received information that a member of an outlaw motorcycle gang had been found in possession of a fraudulent driver licence issued by a Queensland Transport employee. We added this piece of information to other information we had received concerning this same employee — i.e. that he had allegedly been issuing false identification including driver licences, 18+ cards and learner permits.

Analysts identified at least six driver licences/learner permits/18+ cards as having been fraudulently issued by the employee. This intelligence was used to activate a misconduct investigation, which resulted in the laying of a number of charges.

Our commitment to intelligence-based target-identification processes does not limit our ability to become involved in those QPS operations that it and the QPS identify as suitable and appropriate for the involvement of the CMC. Alternatively, matters may come to us by way of a direct request from the QPS for assistance. For example, we recently held an extensive hearings program in support of an organised crime investigation initiated by the QPS in a regional centre.

The CMC is committed to a multi-jurisdictional approach to combating organised crime. Experience suggests strongly that organised crime networks, particularly those operating in drug markets, ignore state borders and engage in trade in, or across, several states. This means that it will frequently be possible to enter into joint investigative arrangements.

## Timeliness of investigations

We continue to look for ways to streamline our investigative work, while remaining mindful of the need to balance speed with thoroughness and fairness.

Of the investigations completed in 2004–05, 77 per cent were finalised within 12 months, with the target being 85 per cent. The achievement to date in 2005–06 has been 68 per cent within 12 months.

The number of investigations over 12 months old still on hand at the end of June 2005 was 20; this has since risen to 25. Some of these matters reflect the most complex of CMC investigations where extensive financial and/or covert inquiries, which are by their nature very lengthy, were undertaken.

## Minimising the impact of investigations

As mentioned in Chapter 5, in the PCMC's last review the committee recommended that we continue to take steps to minimise the impact of our investigations on individual subject officers, complainants, and agencies.

As part of the planning process conducted at the outset and during every misconduct investigation, one of the paramount considerations is the need to achieve an efficient and just outcome, regardless of whether a particular allegation is substantiated. We are mindful of the deleterious psychological impact an investigation can have on complainants and subject officers.

To this end, and subject to operational exigencies, we liaise regularly with relevant agencies, communicating investigative outcomes as early as possible to ensure that disciplinary action (and recommended procedural change) is effected with minimum delay.

We are also conscious that our resources are finite and valuable, and so we try to conduct investigations as cost-effectively as possible. The planning and progress of misconduct investigations is continually monitored to ensure that resources are not dedicated to inquiries that are unlikely to further a particular investigation. Investigators are encouraged to exercise discretion in avoiding lines of inquiry that are unlikely to affect the ultimate outcome, particularly if such inquiries will result in further delay in finalising matters.

## INVESTIGATIONS

In 2003–04, we completed 105 investigations and 109 were finalised in 2004–05. On current progress, we will attain our target of 110 investigations for the 2005–06 year. In the 2004–05 year, 29 per cent of finalised matters resulted in recommendations for criminal, disciplinary or managerial action. This included 101 charges against 47 persons.

### Complex, high-profile operations

Here are examples of some particularly complex, high-profile operations conducted since the last review:

- ▶ **Hayward matter (2003)** — We investigated concerns that a member of the Queensland Parliament, the Hon. Ken Hayward MP, may have acted improperly in relation to various transactions between government agencies and business entities with which he may have been directly or indirectly linked. We also investigated the circumstances of Mr Hayward’s claim for parliamentary travel expenses in relation to a particular interstate trip, because concerns were raised that this trip may have been related to private rather than parliamentary business. Our extensive investigation found no evidence of official misconduct but found there could have been a breach of the legislation that prohibits members of parliament from transacting business with state entities. The result of this conclusion was that a contract for sale of land which was pending at the time of the investigation could be void and that the Legislative Assembly could resolve that Mr Hayward’s seat in parliament be vacated. As a result of our recommendations, the contract for the proposed sale of land was cancelled and an amendment was made to the *Parliament of Queensland Act 2001* to remove the inadvertent exemption relating to land transactions. Our report, published in November 2003, also included a number of procedural recommendations relating to the sale of land by the Department of State Development and suggested changes to the administrative arrangements for travel claims by parliamentarians.
- ▶ **Foster Care Inquiry (2003–04)** — This inquiry began as a result of a number of separate complaints to the CMC about the standard of foster care being provided by a government department. Public hearings were held as part of a broad-based investigation. Our report, *Protecting children: an inquiry into abuse of children in foster care*, released in January 2004, contained 110 recommendations for reform, including the creation of a new government department, the Department of Child Safety.
- ▶ **Hanson–Ettridge matter (2004)** — Under a resolution of parliament, we conducted an investigation into allegations arising from police investigations and litigation concerning the founders of the political party ‘One Nation’: Pauline Hanson and David Ettridge. Our report, published in January 2004, concluded there was no evidence of official misconduct, political pressure or lack of due process in the matter.
- ▶ **Brisbane River flood studies investigation (2004)** — We investigated whether there was misconduct in the failure of the Brisbane City Council to publish reports regarding flood studies for the Brisbane River. While we did not find official misconduct, we made recommendations regarding the decision-making processes of the Establishment and Coordination Committee and council’s record keeping. We also stressed the importance of openness in local government.

- ▶ **The Tugun Bypass investigation (2004)** — We investigated a complaint alleging that the announcement of the Tugun Bypass proposal in February 2004 involved a breach of the government’s caretaker conventions during an election period. Our report found that no official misconduct had occurred, but that the letter delivered by officers of the Department of Main Roads in relation to the proposal did breach proper practice set out in the Queensland Cabinet Handbook. A number of recommendations, designed to achieve full compliance with the accepted conventions, were made and accepted.
- ▶ **The Palm Island airfare investigation (2005)** — We recommended that disciplinary action be considered against two staff from the Aboriginal and Torres Strait Islander Policy Ministerial Office for preparing and publishing a false press statement about the payment of airfares by the minister’s office for two Indigenous leaders. Our report concluded that the then minister, Liddy Clark, knew or should have known that the press statement was misleading but that her conduct did not amount to a criminal offence and, therefore, was not official misconduct.
- ▶ **The Palm Island bribery allegation (2005)** — The Premier referred to us allegations that he had offered to clear debts of \$800 000 owed to the State Government by the Palm Island Aboriginal Council, in return for their support when he opened a government building on Palm Island. We found that the allegations against the Premier did not involve official misconduct.
- ▶ **Review of the Financial Management Guidelines for the Office of the Speaker (2005)** — We investigated allegations concerning the Speaker’s travel and hospitality expenses. Matters relating to hospitality expenses were referred to the DPP for consideration; however, she concluded that no prosecution was warranted. The Premier requested that we review the revised draft guidelines for management of the Speaker’s expenses. The CMC assessed those draft guidelines and delivered a report containing recommendations to strengthen the draft rules governing the Speaker’s expenses. Our recommendations were largely accepted.
- ▶ **Bundaberg Hospital complaints (2005)** — In April 2005, we announced that we would hold a public hearing into allegations that Queensland Health officials ignored complaints received from nurses at Bundaberg Base Hospital about the activities of a medical practitioner at the hospital, Dr Jayant Patel. Shortly afterwards, the government set up a more broadly based inquiry headed by Mr Anthony Morris QC and we decided to postpone its public hearing. We provided the Morris Inquiry with a considerable amount of evidence gathered during its investigation, having interviewed more than 80 patients and staff at Bundaberg Hospital. After the closing of the Morris Inquiry on the grounds of bias in September 2005, a former judge, the Honourable Geoff Davies AO, was appointed by the government to take over the inquiry. Commissioner Davies provided his report to the Premier on 30 November 2005. His report covered all of the issues raised in complaints held by the CMC and it also recommended that we consider charging Mr Peter Leck (Bundaberg District Manager) and Dr Darren Keating (Bundaberg Director of Medical Services) with official misconduct. Dr Keating resigned from Queensland Health before we could consider any charge of official misconduct against him.  
  
On 2 December 2005 we resolved that public hearings in relation to the matters were no longer required. We also resolved to start proceedings for official misconduct against Mr Leck in the Misconduct Tribunal. Mr Leck

resigned shortly after and it was no longer possible to charge him with official misconduct.

There was no requirement for us to conduct further investigations.

- ▶ **Appointment of Information Commissioner (2005)** — We were asked by the Leader of the Opposition to examine allegations concerning the circumstances in which the Queensland Information Commissioner was appointed in February 2005. Our report, published in July 2005, reported that, while some questions remained as to certain aspects of the process by which the Information Commissioner was selected, no reasonable suspicion of official misconduct existed in relation to any of the individuals associated with the appointment. However, our report commented on the desirability of a bipartisan approach to the appointment of independent officer holders, to help avoid or lessen any controversy attached to high-profile appointments.
- ▶ **Serious injuries caused during an arrest (2005)** — We investigated an incident where a young man suffered serious and permanent injuries during a police arrest in 2004. Our investigation found that the man was lawfully detained and that the two arresting police officers did not use what the criminal law would regard as excessive force. The investigation nonetheless highlighted the need for the QPS to review the training of police officers so that they are better equipped to deal with mentally disturbed people, and have more understanding of the need to monitor people who have been forcibly restrained. Our report, entitled *The arrest of Samuel Hogan*, was published in August 2005.
- ▶ **Gold Coast City Council (2006)** — In October 2005 we held public hearings into allegations concerning the relationship between certain candidates in the Gold Coast City Council election of 2004 and a number of Gold Coast developers. Our report, *Independence, influence and integrity in local government*, published in May 2006, found that the electoral process had indeed been corrupted and made recommendations for prosecution proceedings against six people. It also made 19 recommendations for the reform of the local government electoral process.

## Summaries of other significant investigations

- ▶ **Two counts of stealing (2003)** — As a result of a CMC investigation, a former police officer was charged with two counts of 'stealing' and two counts of 'possession of a dangerous drug' over theft of police drug exhibits. In November 2003, he pleaded guilty and was sentenced to 12 months' imprisonment, suspended after three months for three years.
- ▶ **QRail contracts (2001–04)** — After an extensive CMC investigation into alleged corruption in the awarding of QRail contracts worth almost \$1 million, a QRail officer and four external contractors faced 58 charges including fraud, official corruption, receiving secret commissions and stealing as a servant. We executed search warrants at targeted addresses and seized a significant amount of documentary evidence. Investigations revealed that a number of companies associated with the QRail officer had overcharged the department or had failed to supply goods and services — resulting in excess payments. Investigative hearings heard evidence of kickbacks and other corrupt activities. The former QRail officer pleaded guilty to six counts of fraud with aggravated circumstances and was sentenced to a six-year jail term with a recommendation for parole after two years. The four external contractors each

pleaded guilty to fraud offences and were sentenced to varying terms of imprisonment between two and two and half years, to be suspended after serving periods ranging between three and five months.

- ▶ **Transport officer (2004)** — As a result of a CMC investigation, a senior transport officer was charged with 27 counts of receiving secret commissions arising from the alleged receipt of payments from trucking companies in return for road safety certificates. He was convicted in May 2004 and sentenced to 12 months' imprisonment, suspended after three months, on the condition that he be of good behaviour for three years.
- ▶ **Prostitution offences (2004)** — As a result of a CMC investigation, a former police officer, his wife and another woman were charged with prostitution offences. The police officer and his wife pleaded guilty and were fined \$1500 and \$4500 respectively in April 2004.
- ▶ **Death in police custody (2004–05)** — In late 2004, we investigated the circumstances surrounding the death in police custody of an Aboriginal man at Palm Island and information obtained from the investigation was referred to the State Coroner. We also investigated complaints arising from the events following the death in custody. Most of the complaints were resolved by early 2005 through mediation. However, four required further investigation and were finalised in July 2005. These involved the exercise of police powers to enter and search, allegations of excessive force during the arrests and the handcuffing of people who were not suspects. The investigation did not find sufficient evidence to establish official misconduct on the part of any police officer; however, it did result in recommendations for police training in relation to the provision of the *Public Safety Preservation Act 1986* and a number of other recommendations to improve police procedures relating to such incidents.
- ▶ **Fraud (2004–05)** — We investigated an allegation that a senior Queensland Transport officer defrauded the department of moneys received from customers as payment for motor vehicle registrations. The officer admitted that, between 2000 and 2004, he created false credits in various customer accounts amounting to more than \$250 000 then appropriated those moneys for his own use. The matter is to proceed on an ex officio indictment by way of a plea of guilty.
- ▶ **Indecent dealing (2004–05)** — We investigated an allegation that a high school teacher indecently dealt with and recorded an indecent visual image of a 14-year-old student. Forensic examination of the teacher's computer located email and video evidence which supported the allegations and the matter was referred to the QPS for prosecution. The teacher was charged and the matter is now before the courts.
- ▶ **Inappropriate relationship with female teacher (2004–05)** — We investigated a complaint from a mother that her young son was in an inappropriate relationship with his female teacher. Examination of the student's mobile telephone revealed text messages from the teacher to the student that had sexual overtones. A disciplinary brief was forwarded to Education Queensland; the teacher was terminated from her employment and her teacher registration suspended.
- ▶ **Illicit drugs being supplied to juveniles in custody (2005–06)** — We investigated a complaint that an employee at a Youth Detention Centre had supplied illicit drugs to juveniles in custody. As a result of our

recommendation to the DPP, the employee was charged with four offences under the *Drugs Misuse Act 1986*. The matter is now before the courts.

- ▶ **Lying to parliament (2005)** — We investigated a complaint made by the Leader of the Opposition concerning the possibility that the Honourable Gordon Nuttall MP, Minister for Health, gave false answers to questions asked of him by a member of an estimates committee of the Legislative Assembly. On the basis of the evidence identified in the investigation, we decided that prosecution proceedings within the meaning of section 49(1) of the *Crime and Misconduct Act 2001* should be considered.
- ▶ **Extortion (2005–06)** — We investigated a complaint from a solicitor that his client, a Mareeba man, had advised him that a local QPS officer was attempting to extort \$8000 from him. We immediately sent investigators to the area and arrangements were made for the complainant to meet with the subject officer to hand over some money. The meeting was covertly monitored and recorded. The officer was detained and charged. The matter is now before the courts.

## Chapter 7: Continuous improvement of the Queensland Police Service

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This chapter looks at the many ways in which the CMC works with the QPS to improve policing in Queensland. Continuous improvement of the police service was a key focus for the former CJC and remains an important area of work for the CMC.

### OVERVIEW

Since the 1990s, this organisation has focused its efforts on raising the standards of accountability, integrity and performance of the QPS. A great deal has been achieved, including:

- ▶ introduction of a new complaints-handling process
- ▶ adoption of new methods of policing (e.g. beat policing, problem-oriented policing)
- ▶ introduction of new police powers.

Our ambitious program of continuous improvement has only been able to be achieved because of the preparedness of the QPS and the CMC to work in partnership to build the police service's capacity. The CMC places a high value on this unique working relationship, and looks forward to working with the service in the years to come to achieve even higher standards of accountability, integrity and performance.

The following discussion highlights the key program areas and some of the initiatives undertaken by the CMC to improve the Police Service in the three years since the last PCMC three-yearly review.

### REDUCING MISCONDUCT AND ENHANCING INTEGRITY

The history of handling complaints against police and the roles of the CMC (and its predecessor, the CJC) and the QPS, which have been considered in past PCMC reviews, are outlined in the CMC's August 2004 publication *Handling complaints against Queensland police: past present and future*.

The CM Act, reflecting the evolution of complaints handling, gave primary responsibility for 'police misconduct' to the Commissioner of Police and primary responsibility for 'official misconduct' to the CMC.

Complaints of police misconduct are dealt with by the QPS (subject to monitoring by the CMC) unless the CMC determines that they fit the criteria for investigation by the CMC. Complaints of official misconduct, although they are the primary responsibility of the CMC, are generally also dealt with by the QPS through application of the section 34 principles (particularly the devolution principle), subject to monitoring by the CMC — unless we determine that they fit the criteria for investigation by the CMC.

In March 2002, the CMC gave interim approval to policies and procedures developed by the QPS for dealing with complaints of 'misconduct'. These were inserted in the QPS *Human resource management manual* (HRM manual) as

section 18, 'Complaints management', and provide for resolution of complaints by investigation, managerial resolution, or taking no further action.

Managerial resolution is a concept formulated in the joint CJC/QPS Project Resolve (referred to in our publication *Handling complaints against Queensland police*), and is defined as:

... a flexible process for the efficient and expeditious resolution of complaints against members of the Service involving breaches of discipline and misconduct. It is designed to encourage and empower managers/supervisors to effectively respond to complainant concerns relating to a member's performance, competence, conduct or integrity through guidance, coaching and/or improvement strategies.

Managerial resolution reflects the notion of managerial responsibility. As previously stated, the CMC considers that, for a strong culture of integrity to exist, managers must take responsibility for the culture and conduct of their staff and be made accountable for that responsibility.

The CMC has embarked on a major review of various integrity systems in the QPS, comprising two significant long-term projects, known as Project Verity and Project Ice. The review has the strong support of the Commissioner of Police and is being undertaken with the active assistance of the Ethical Standards Command (see below).

## Complaints handling

The QPS notifies the CMC on a case-by-case basis of all complaints made directly to the QPS by members of the public or by members of the police service (including managers and supervisors) that fall within the definition 'police misconduct' and 'official misconduct'. The CMC also receives complaints directly from the public.

The QPS cannot take any action in relation to a complaint until the CMC gives its assessment decision. In the past, the CMC and QPS's Ethical Standards Commands (ESC) met to reach a joint decision on all matters, but this no longer occurs because experience indicated that in only very few instances did we disagree about an assessment decision. The CMC now promptly assesses a complaint and advises the ESC. If there is an issue with the decision, the ESC will take it up with the CMC; and often the ESC will contact the CMC to discuss a complaint that has just been received before an assessment decision is made.

In any event, the CMC and ESC meet weekly to discuss issues of concern, including those relating to specific complaints.

In those cases where the CMC determines that the complaint may be dealt with by the QPS (other than those that we determine should be investigated by the ESC), the ESC has regard to any recommendation made by the CMC about how the QPS should deal with a complaint and the level of monitoring required by the CMC and then decides how the complaint should be dealt with. In most cases complaints are passed to the relevant region or command to deal with in accordance with the decision of the ESC.

It is proposed to give section 40 directions<sup>31</sup> to the QPS so that they can immediately start dealing with a significant proportion of complaints that have in effect been 'pre-assessed' and then advise the CMC by schedule. The CMC will of course monitor the way in which these pre-assessed complaints are dealt with.

In 2003–04, 2115 complaints involving 3303 subjects were registered; in 2004–05 the corresponding figures were 2101 complaints involving 3516 subjects; and in 2005–06, as at 31 December, 920 complaints involving 1456 subjects had been registered.

In 2003–04, 2.6 per cent of complaints were investigated by the CMC, 81.8 per cent were referred to the QPS to deal with, and 15.6 per cent were assessed as warranting no further action; in 2004–05 the percentages were 3.2 per cent, 83.5 per cent and 13.3 per cent, respectively; in 2005–06, as at 31 December, those figures were 0.8 per cent, 86.1 per cent and 13.1 per cent, respectively.

## Monitoring of complaints handling

The CMC continues to monitor the way in which the QPS deals with complaints by way of targeted reviews — before and after finalised (see Chapter 5) and by way of audits.

Approximately 4 per cent of complaints referred to the QPS to deal with are subject to monitoring by way of review.

During 2003, the CMC conducted an audit of a random sample of complaints dealt with by the QPS to ascertain compliance with certain standards for complaints management required under section 18 of the QPS HRM manual. The standards against which compliance was measured were selected on the basis of information gathered from individual reviews by the CMC of complaints dealt with by the QPS. The results of the reviews had suggested that compliance with these particular standards would be a good indicator of the integrity with which the complaints were handled. One of the standards included selection of the appropriate investigating officer. Complaints dealt with by way of investigation were the main focus of the audit.

The same sample of complaints was the subject of an audit of the timeliness with which the QPS resolved them.

Further audits were conducted in 2004. One examined the levels of compliance with all the standards set by section 18 of the HRM manual, and focused on the integrity of the manner with which the complaints were resolved. This audit considered not only those complaints dealt with by investigation, but also those resolved by managerial resolution and no further action. An audit of timeliness was also conducted.

The compliance audits conducted in 2003 and 2004 showed that the vast majority of matters were dealt with by the QPS appropriately and no significant systemic issues of concern were revealed.

The timeliness audits identified and analysed the various timeframes of the complaints handling process. The issues raised by these audits, as well as the reviews of individual complaints, are being taken into account in Project Verity.

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31. Under section 38 of the CM Act, public sector agencies must notify the CMC of complaints on a case-by-case basis.

## Project Verity and devolution

Project Verity is designed to ensure that the QPS has a robust and effective complaints management system that deals effectively with misconduct, and in particular to ensure that the system gives full effect to the principle of devolution and the recommendations of the joint CJC–QPS Project Resolve (see the 2004 CMC publication *Handling complaints against police: past present and future*).

In keeping with the principle of devolution under the CM Act, the CMC has devolved most complaints that meet the criteria of official misconduct or police misconduct to the Ethical Standards Command (ESC) of the QPS. Now is an opportune time to take this devolution further, by determining the level at which complaints should be managed and the QPS managers who should handle them. It is hoped that, by emphasising managerial responsibility as the proper way to resolve complaints, the ultimate aim of embedding a culture of integrity within the QPS and increasing public confidence in the service will be fulfilled.

The notion of devolving responsibility for complaints management may initially seem unique to Queensland, but examination of the literature indicates otherwise. While the relationship between the CMC as an overview body and the QPS may be unique, both in Australia and around the world, many police services are similarly monitored by overview bodies. Not all overview bodies direct a devolved approach but, in the last ten years, royal commissions and reviews of the management of police complaints have found in favour of a devolved structure (e.g. Royal Commission into the New South Wales Police Service, conducted by the Hon. Justice JRT Wood, 1997; A Review of Professional Standards in the Australian Federal Police, conducted by the Hon. William Kenneth Fisher AO, QC, 2003; and *Supervision and intervention within early intervention systems: a guide for law enforcement chief executives*.<sup>32</sup> In the words of the Hon. William Kenneth Fisher (2003, p. 55), ‘the change from what was in the past a matter of traditional disciplinary process is now in the hands of local commanders’.

Project Verity was initially conceived as an umbrella project to review the QPS complaints-management system. As the project developed, it became clear that there was a need to break it into a number of distinct projects:

1. a devolution project, to examine:
  - (a) the most effective way to devolve responsibility for decision-making about the handling of complaints from the ESC to appropriate levels within the police regions and commands
  - (b) the appropriate monitoring regime within the QPS and by the CMC
2. a disciplinary process and sanctions project, to examine aspects of the process including possible alternatives to the disciplinary hearing process, and the appropriateness of the various sanctions available within the process
3. an audit of the QPS complaints project, which will largely replicate earlier timeliness and integrity audits undertaken by the CMC. This will be a quality assurance process to ensure that the recommended devolution process is effective in the handling of complaints.

One of the particular issues that the project will focus on is significantly reducing the time it takes to oversee the progress of a complaint through the system.

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32. Walker, S, Osnick, S & Berke, A 2005, *Supervision and intervention within early intervention systems: a guide for law enforcement chief executives*, Washington, DC: Police Executive Research Forum.

Currently, there are multi-layered supervisory points within the extended line of command — from the investigator at the local level, through the Region, to the ESC. Not all these layers add value, but they do add to the time it takes to resolve a matter. It is proposed to identify categories of complaints that can be dealt with and signed off at various appropriate levels. The current protracted process will be replaced by a robust monitoring regime, which will include a random and targeted selection of complaints for individual review or for audit by the QPS and the CMC.

The devolution project is well under way and it is expected that the second project will be completed in the next financial year.

## Complaints against police by Indigenous people

The CMC has a process specifically for assessing Indigenous complaints, through the participation of our Indigenous Complaints Officers and Indigenous Liaison Officers in an assessment meeting which also involves legal officers and investigators. Their broad-based knowledge and experience are brought to bear on the assessment of individual complaints.

It is anticipated that the recommendations of the Palm Island Coronial Inquest will influence the CMC's work in relation to dealing with Indigenous complaints.

The CMC has been working with the QPS Ethical Standards Command and the Cultural Advisory Unit to develop culturally appropriate, timely and effective ways to deal with and prevent complaints by Indigenous people against police, and to monitor emerging trends and issues.

Mediation has been found to be a way of resolving complaints against police that can address not only the specific complaint but also the underlying issues, and thus enhance the relationship between the community and the police. The process has been tested, but it requires refinement and formalisation.

The CMC's Indigenous Complaints Officer was seconded to the QPS Cultural Advisory Unit to assist, among other things, in establishing Indigenous Community Police Consultative Groups (ICPCGs) in various locations around the state, including Bundaberg, Cunnamulla, St George, Beenleigh, Logan, Rockhampton, Townsville, Palm Island and Thursday Island. There are currently 18 active ICPCGs. They meet regularly to discuss issues involving policing in their communities and related matters, such as the establishment of Murri Watch, positive interaction between police and juveniles, and the roles and appointments of police liaison officers. The ICPCGs provide a forum for dealing with any systemic issues that may arise, and for preventing and in some cases dealing with complaints made against police.

Serious complaints against police will, of course, still warrant investigation and monitoring.

## MONITORING EMERGING TRENDS AND ISSUES

In the course of assessing complaints and conducting reviews and audits, emerging trends and possible issues in relation to conduct or behaviour of concern within the QPS may come to light. This information may result in further targeted reviews and audits, and the development of capacity-building strategies and research-based projects (e.g. the research project on monitoring complaints about police dog bites — see page 99).

The CMC is currently monitoring 'process corruption' allegations against QPS officers, as part of our general monitoring of trends in complaints against police. In this context, a 'process corruption' allegation means an allegation of official corruption or a similar offence involving an abuse of public office, or of attempting to pervert the course of justice or a similar offence against the administration of justice. Matters considered to involve credible allegations of serious process corruption are investigated by the CMC.

We are also monitoring complaints made by internal police whistleblowers.

Issues for consideration for future audits include:

- ▶ categorisation of breaches of discipline
- ▶ 'interwoven with court' matters (i.e. matters that are not investigated by the QPS on the basis that there is a connection between the circumstances giving rise to the complaint and criminal charges against the complainant).

### **Project Ice (review of best-practice integrity programs)**

The focus of this project is on reviewing a range of proactive integrity-based activities (e.g. recruit selection, ethics training, policy compliance auditing) which are designed to prevent misconduct from occurring in police organisations. The review covers programs in other parts of Australia and worldwide.

The review will result in a compendium of best practice in a number of key misconduct prevention areas, such as leadership management and supervision, human resources, risk management, and monitoring and audit. This report will be provided to the ESC. Over the next two years, it is envisaged that we will work with ESC staff to review QPS practice and, where relevant, incorporate some of these elements of best practice into existing QPS policies and procedures.

### **Project Barossa (predicting police misconduct)**

In addition to Projects Verity and Ice, we have begun a study aimed at identifying any early warning signs of police misconduct. Specifically, several years ago the CMC began a research project that examined the potential use of early warning systems during, in particular, the police recruitment, selection and training processes. The purpose of the study was to determine relationships between complaints against police and any measurable influencing factors, in order to find out whether intervention during selection or training could reduce the number of complaints at a later stage. To examine this question, we have collated and examined information about a cohort of police recruits who undertook their training in 1997 and 1998.

Factors such as academic achievements, psychological profiles and a history of disciplinary matters (QPS data) were also considered important for these analyses, but we were unable to access that information from the QPS at the time. However, the project has recently been revitalised and negotiations with the QPS for access to the data are currently under way.

If the QPS data are made available, we plan to complete this project and produce a report in the 2006–07 financial year. We envisage that the results could be used to help the QPS and other police services develop early warning systems for recruitment and selection, and early intervention programs for problematic officers.

## Monitoring the use of OC spray

Oleoresin capsicum (OC) spray is a relatively new use-of-force option for Queensland police. The spray is now used commonly by police to help them deal with volatile situations and aggressive people. Our research in this area formally assessed the risks of using OC spray and determined its overall effectiveness.

A report entitled *OC spray: oleoresin capsicum spray use by Queensland police* was released in October 2005. Although it concluded that OC spray was an effective and relatively safe use-of-force option for police in Queensland, it made five recommendations to enhance current QPS policies and procedures in:

- ▶ recording and monitoring the use of OC spray
- ▶ overseeing the use of OC spray
- ▶ reviewing OC spray training and tactics
- ▶ aftercare.

The QPS is considering the report's recommendations.

## Monitoring police pursuits

Police pursuits present policy difficulties for police organisations, because of the necessity to balance the needs of law enforcement against public safety. Research overseas and in Australia has confirmed that police pursuits are a high-risk activity and that more people are injured and killed from pursuits than from police use of firearms. In recent years there has been a general movement in many jurisdictions towards increasing control of pursuits and tightening policy to limit pursuits to certain offences.

In 2003 the CMC released the findings of a major study into police pursuits in Queensland. The research focused on identifying the nature, frequency and consequences of pursuits, as well as any implications for the QPS in terms of policy and training.

The report concluded that the QPS had taken some constructive steps to address the risks associated with police pursuits. However, it suggested that the QPS could further enhance its policy and practices, primarily by tightening and clarifying its official policy on pursuits. In particular, we recommended that the QPS adopt a more restrictive pursuit policy that prohibited the commencement of a pursuit for traffic or driving offences.

The QPS has established a working party to consider the CMC's recommendations.

## Monitoring complaints relating to police dog bites

In 2000, in the course of monitoring complaints, our predecessor organisation the CJC observed a marked increase in the number relating to people being bitten by police dogs. This prompted the CJC to conduct a review of QPS dog squad policies and procedures. As part of the review, some baseline data (e.g. number of tracks and searches; number of apprehensions; number of bites) were collected to enable an evaluation to be conducted to measure the impact of suggested changes and improvements to QPS dog squad policies and practices.

In 2005, the CMC undertook a second review to assess whether there had been a decrease in police dog bites and related complaints. We will soon release a report entitled *QPS dog squad: review of bite incidents and management*. The report will

describe how and why police dogs are selected, trained, deployed and managed. In addition to presenting the findings of an analysis about whether the number of police dog bites and related complaints has decreased since 2000, the report will make some general suggestions to promote the continuous improvement of the QPS dog squad.

## RESEARCHING POLICE METHODS OF OPERATION

In addition to our important review and monitoring functions in relation to the QPS, the CMC is also well recognised throughout Australia for its work with the QPS to develop, implement and evaluate innovative policing methods and strategies, particularly in the areas of problem-oriented policing and beat policing.

### Problem-oriented policing

Over the last 10 years, we have persistently advocated that the QPS take a problem-oriented policing (POP) approach in the delivery of policing services to the community. A key feature of POP is that it encourages police to work in partnership with others in the community to systematically address the underlying patterns of crime, rather than simply reacting to a crime event after it has occurred and treating it as if it was a unique and isolated event.

In 1999, the QPS adopted POP as a major policing philosophy. Despite the service's substantial commitment to what it calls 'problem-oriented and partnership policing' (POPP), the full integration of this philosophy into all aspects of mainstream policing is yet to be achieved.

In 2005, the CMC released its third major report dealing with POP. This report presented the key findings of an evaluation of applying the problem-oriented policing approach to a detective (i.e. investigative) environment. The report titled *Problem-oriented policing in a detective environment: a Queensland case study* illustrated both the potential and the challenges of POP for contemporary police services.

The CMC remains committed to supporting the QPS's efforts to shift away from what is essentially reactive (demand-driven) policing towards a more proactive approach to dealing with crime and community problems. We look forward to working in partnership with the QPS in an advisory capacity to achieve this aim.

### Beat policing

Beat policing is a community policing strategy designed to make an individual police officer responsible for the community's policing needs in a defined geographical area. Officers are encouraged to take 'ownership' of their area and employ proactive strategies to address the underlying causes of crime and community problems within their beat. Beat policing constitutes an important shift in the nature of operational policing.

Since the introduction of the first Neighbourhood Police Beats in Toowoomba in 1993, the CMC has been instrumental in the ongoing development of this highly successful program. In addition, the QPS itself has undertaken three major evaluations of different models of beat policing, such as those located in neighbourhoods, shopping centres and existing police stations. A fourth evaluation is currently under way. This project is highly unusual in that it involves an

evaluation of the establishment of a police beat in a major hospital — the Princess Alexandra (PA) Hospital in Brisbane.

The evaluation of the PA Hospital Police Beat is a six-month joint QPS–CMC project designed to assess the effectiveness of providing a permanent police presence in a major city hospital. The project is scheduled for completion in June 2006.

## Policing domestic violence

In addition to beat policing and POP, the CMC has contributed to the improvement of the police service in other areas. For example, in 2003 we undertook a major study into the problem of domestic violence. Specially, we looked at the ‘policing response’ to domestic violence and set out to identify ways in which the current response to domestic violence could be improved.

A public report entitled *Policing domestic violence in Queensland: meeting the challenges* was released in April 2005. The report made five recommendations, aimed at addressing the four key barriers to achieving an effective response to domestic violence that police encounter. In particular, our research revealed a need for police to:

- ▶ conduct thorough investigations of domestic violence incidents, collect evidence and proceed with criminal charges where appropriate
- ▶ consider the merits of police-issued protection orders
- ▶ implement a case management approach to chronic repeat calls for service
- ▶ review the role, function and rank of the State Domestic Violence Coordinator
- ▶ review the role and function of Regional Domestic Violence Coordinators.

Feedback that we have received since the publication of the report, especially from victims of domestic violence and victim support groups, has been very positive. In April 2006, the Minister for Police and Corrective Services introduced into State Parliament a Bill to allow police to issue ‘notices to appear’. According to the Police Minister, this is the first stage of a series of reforms to be rolled out over the course of the next year.

## WORKING WITH THE QPS IN OTHER WAYS

The CMC is involved in a range of additional activities relating to the continuous improvement of the QPS. These include:

- ▶ representation on various police-related committees and working parties
- ▶ surveys about policing
- ▶ other policing research initiatives and public inquiries.

## Representation on policing committees and working parties

Due to our expertise across a number of policing domains (integrity, use of force, police powers, policing strategies, and education and training) CMC representation is often requested on a wide range of committees and working parties, such as:

- ▶ QPS Alcohol and Drug Testing Committee
- ▶ Queensland Aboriginal and Torres Strait Island Police Steering Committee

- ▶ Police Education and Advisory Council
- ▶ QPS Academic Board
- ▶ QPS Academic Advisory Committee
- ▶ Seniors Task Force.

## Surveys about policing

As mentioned previously, since 1991 the CMC has commissioned six surveys of Queensland residents to assess their perceptions towards the QPS on a regular basis. These surveys are designed to:

- ▶ measure the extent to which the public perceive there to be misconduct within the police service, public service and local government
- ▶ measure the public's willingness to use the complaints system.

The CMC will release the key findings of the most recent survey of public attitudes to the police in mid-2006.

The CMC has also conducted ongoing research since 1995 to ascertain the attitudes of officers about ethical conduct, reporting misconduct, and the disciplinary and complaints process within the QPS. The survey 'Police Views on the Complaints and Disciplinary Process' is administered to police recruits, first-year constables and experienced officers during training at the academy, and provides a valuable baseline to monitor any shifts in the QPS organisational culture relating to ethical conduct. This research was initially undertaken as part of the CJC review of the implementation of the Fitzgerald Inquiry recommendations relating to police complaints and discipline procedures.

The survey is designed to ascertain how seriously officers view hypothetical scenarios that describe various forms of unethical conduct by police, and to what extent they perceive a difference between their own views and that of QPS management, the public and a 'typical officer'. It also assesses the willingness of officers to report misconduct, and respondents' perceptions of the disciplinary and complaints procedures within the QPS.

Now that a decade has passed since the CMC started to collect these data, our Research and Prevention business unit is considering undertaking a major longitudinal study of police recruit attitudes to police misconduct. It is envisaged that this project would be completed in 2007.

## Operational Performance Review (OPR)

The Operational Performance Review (OPR) is a performance-focused meeting conducted by the Commissioner of Police aimed at improving operational performance and effectiveness within the police service. Queensland's OPR is aimed at making District Officers more accountable for managing and monitoring local crime and management issues.

The CMC believes that OPR may be one of the most important police management innovations introduced by the QPS. We therefore agreed to evaluate the implementation of this initiative, paying particular attention to the OPR process itself and its contribution, so far, to the operational performance and strategic and day-to-day management of the QPS. The evaluation will also consider ways in which the effectiveness of the OPRs could be enhanced, and will provide

benchmark data for the development of the OPR process into the future. Our report is nearing completion.

A parallel evaluation focusing on the impact of the OPR in terms of reducing crime is being conducted by an associate professor from Griffith University, and a report of the evaluation is currently in draft form. The two studies together will provide comprehensive insights into the effectiveness of the OPR as a vehicle for the strategic management of the police service.

## **Collaboration with police oversight agencies**

In late 2005 a meeting of all Australian police oversight agencies, including the CMC, served to underscore the need for strong and effective independent oversight of law enforcement officers. They discussed the critical importance of accountability, at a time when the powers vested in law enforcement are significantly increasing.

The meeting generated a renewed commitment to the principle of oversight agencies working cooperatively to ensure the sharing of knowledge and experience, and to reduce unnecessary duplication of effort. To this end the agency heads agreed to meet on a regular basis.

Members of the CMC Police Research Team and the Director, Research and Prevention will meet with their counterparts from other police oversight agencies on 31 May 2006 to discuss current policing research. This will also provide an opportunity to investigate possible collaborative projects, and to examine the findings and recommendations of like agencies in other states, in accordance with section 59(2)(b) of the CM Act.

## Chapter 8: Witness Protection and Operations Support

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This chapter explains how the Witness Protection Program operates within the CMC, flags some important legislative issues for the committee's attention, and highlights the progress that has been made recently in the area of specialist training for witness protection officers. The chapter then explains the Operations Support function at the CMC.

### WITNESS PROTECTION PROGRAM

Witness protection is an essential component of the Queensland criminal justice system, because it provides an environment that encourages people in danger to come forward and assist law enforcement agencies. Since its inception, the Witness Protection Unit (WPU) has maintained a 100 per cent success rate in protecting witnesses.

#### Successes and achievements

The Witness Protection Program offers services to people who are in need of protection because they have assisted a law enforcement agency or because they are closely associated with a person who has provided such assistance. These people may be witnesses in a court proceeding or have otherwise helped in some way.

Witness protection services may include providing court security or close personal protection, and helping witnesses secure a safe location on a temporary or permanent basis.

The following are examples of witness protection outcomes:

- ▶ Evidence was provided by a protected witness and a child, and contributed to the defendant being sentenced to three years' imprisonment for indecent dealings with a minor.
- ▶ A protected witness gave evidence in respect of an attempted murder. The threat was sentenced to nine years' imprisonment.
- ▶ Court security was provided to a protectee giving evidence in respect of the murder of their partner. A sentence of life imprisonment was imposed.
- ▶ Two protected witnesses gave evidence in relation to drug trafficking charges. Their evidence contributed to the defendant being sentenced to nine years' imprisonment and classified a Serious Violent Offender.
- ▶ Extensive close personal protection was provided to a hospitalised witness who had survived an attempt on their life.
- ▶ Court security was provided to witnesses in relation to a lengthy high-profile murder investigation in New South Wales.
- ▶ Court security was provided to a protected witness who was the victim of a rape, torture and assault. The two accused were sentenced to four and five years' imprisonment respectively.
- ▶ Three protectees, one a paraplegic as a result of an alleged attempted murder and serious assault by the threat, gave evidence at a committal hearing.

- ▶ A protectee provided evidence in a matter where the threat was sentenced to over 12 years' imprisonment for trafficking and possession, and where property to the value of \$4.1 million was seized.

## Witness Protection Advisory Committee

The Witness Protection Advisory Committee comprises the Assistant Commissioner of Police; the Director, Witness Protection and Operations Support (Chair); the Executive Director of the CMC; the Detective Superintendent, Operations Coordinator, Witness Protection and Operations Support; the CMC Official Solicitor; and the Detective Inspector, Officer in Charge, Witness Protection Unit. The role of the committee is to provide a multidisciplinary, high-level process for achieving the objectives of witness protection. Its primary objectives are to make assessments and provide strategic advice and recommendations to the Chairperson and/or Witness Protection Unit.

The functions of the Witness Protection Advisory Committee include:

- ▶ Making assessments, evaluations, recommendations and directions in respect of:
  - applications for interim protection
  - applications for protection
  - applications for new identity
  - withdrawals from witness protection
  - other matters of significance relating to witness protection
- ▶ advising and making recommendations to the CMC Chairperson on issues relating to witness protection
- ▶ providing guidance and direction to the Witness Protection Unit
- ▶ authorising financial or other arrangements in particular instances where a protectee withdraws from witness protection.

## Legislative issues

### Recent legislative amendments

Since the last review, amendments to the *Witness Protection Act 2000* have been enacted to provide for an assumed identity for witness protection officers, and to prevent disclosure of details concerning the Witness Protection Program itself.

The new section 20A, 'New identity for witness protection officer', provides for the Chairperson to authorise the creation of an assumed identity for a witness protection officer when he is satisfied that the assumed identity is reasonably necessary for the proper administration of the program or to ensure the safety of the officer while administering the program.

Section 36 of the *Witness Protection Act 2000* contained penalty provisions for disclosure about a 'relevant person' (i.e. a person who is, or has been, included in the Witness Protection Program) that compromises their security. Section 36(2) now states that it is also an offence for a person to, without authority, knowingly, disclose or record information about a relevant person if the information compromises the security of that person or the integrity of the program.

The Crime and Misconduct and other Legislation Amendment Bill 2006, introduced in parliament in April 2006, strengthens the witness protection powers by providing the following new provisions:

- ▶ Where the CMC requires documents or items to assist a protected person or the integrity of its Witness Protection Program, it will be able to partially conceal the reason why the information is required when serving notices for the production of the document or items. Typically this will be used when requiring information from, for example, a bank to help determine a person's location and to maintain the protected person's safety.
- ▶ The CMC will be able to enter short-term witness protection arrangements, with streamlined approvals processes. This will be used where temporary protection of a person is needed at short notice for court and other public appearances.
- ▶ Ensuring a person on interim or short term protection arrangements has the same rights and obligations as a person in the Witness Protection Program.

#### COMPLEMENTARY LEGISLATION

The CMC has pursued the recognition of the *Witness Protection Act 2000* as complementary legislation to that of the Commonwealth and other states. Where there has not been complementary legislation, the CMC has continued to cooperate with appropriate interstate authorities and develop reciprocal arrangements with them. Consequently, reciprocal arrangements under section 24 of the *Witness Protection Act 1994* (Cwlth) and section 42 of the *Witness Protection Act 2000* (Qld) have now been finalised, allowing Commonwealth identity documents to be generated in support of new identities created under the state legislation.

#### APPROVED AUTHORITIES

The *Witness Protection Act 2000* and Witness Protection Regulation 2001 clarify the intent of witness protection legislation and provide for cooperation between Queensland, the Commonwealth and the other states and territories. It is important to acknowledge that it is not only CMC witnesses who have access to the CMC's Witness Protection Program. The majority of protected witnesses are referred by other law enforcement agencies, principally the QPS.

To this end, witness protection legislation from other jurisdictions has been declared as complementary, and those jurisdictions nominated as 'approved authorities'. Further amendments are being sought to the Witness Protection Act to have Victoria's Office of Police Integrity and Western Australia's Crime and Corruption Commission also named as approved authorities under the Act.

#### GIVING EVIDENCE UNDER A NEW IDENTITY

An issue has arisen where a witness who has been assessed as requiring a new identity arguably commits an offence of perjury if they give evidence to a court in their former name and not in their re-identified name.

This situation may be resolved through application to the court and making a claim of public interest immunity. Our Research and Prevention unit is currently conducting research to determine the ways in which witness protection units in other jurisdictions handle this issue; however, it is anticipated that an amendment to the *Witness Protection Act 2000* will be sought.

## Training

The CMC's Witness Protection Course is now registered as an Advanced Diploma in Witness Protection through the Department of Education and Training.

In March 2004 the Australasian Heads of Witness Protection Conference resolved that the CMC continue to be the lead agency in witness protection training and that, subject to approval, a national course be conducted in Queensland in 2004.

Those attending the inaugural four-week National Witness Protection Course in November 2004 included officers from the QPS, other Australian jurisdictions and an overseas agency. Successful participants were awarded an Advanced Diploma in Public Safety (Police — Witness Protection).

Before the course, in October 2004, the CMC Detective Inspector in charge of witness protection addressed the Europol Heads of Witness Protection about the CMC's training program. The Chairperson of the Europol Heads of Witness Protection then attended the CMC's inaugural national course and reported his experience to the Witness Protection Conference in The Hague in December 2004.

In 2005, the Advanced Diploma in Public Safety (Police — Witness Protection) was awarded to 14 Witness Protection Unit officers in recognition of the particular skills required in the performance of their duties. This attainment provides further validation of the expertise within the unit.

## Research to examine procedures for new identities

In July 2005 a joint project of our Witness Protection and Research and Prevention units was initiated, to review how other law enforcement jurisdictions manage the issuing of new identities for protected witnesses. The project will clarify potential best practice, and may result in adjustments to Witness Protection's policies, procedures and practices.

The project focuses on three key areas:

- ▶ how law enforcement agencies conduct the process of giving someone a new identity (from initial contact to finalisation of a new identity)
- ▶ how law enforcement agencies ensure that the re-identified witness meets their responsibilities (e.g. outstanding debts, family responsibilities, criminal histories)
- ▶ how law enforcement agencies discharge their duty of care to the community, particularly in regard to re-identifying a witness who has a criminal background or who may be at risk of committing an offence.

A report with recommendations will be furnished at the completion of the project.

## OPERATIONS SUPPORT

Operations Support consists of three distinct areas:

- ▶ The **Physical Surveillance Unit** provides support, on request, to the operational areas of the CMC. The unit's primary objectives are to obtain evidence and gather intelligence on people targeted by the investigative areas whom they suspect of being involved in criminal or misconduct activity. The unit also supports the CMC's witness protection and intelligence functions.

- ▶ The **Technical Surveillance Unit** provides various types of electronic surveillance and recording devices to support witness protection as well as both crime and misconduct investigations.
- ▶ The **Forensic Computing Unit** provides the CMC with the capacity to examine digital evidence including mobile phones, cameras and computers. The unit provides significant support to criminal investigations, including investigations into paedophilia, organised crime and official misconduct. With the increase in technology, and significant growth in requests for analysis of digital evidence, the current accommodation for the unit is being expanded. The intention is to provide for additional examination stations and equipment.

## Successes and achievements

The following are examples of some operations where the Operations Support units have contributed significantly to the success of CMC operations:

- ▶ **Operation Alpha Submission Barrier.** This was a joint operation with the QPS and ACC that required both physical and technical surveillance support in both a city and a rural environment. Due to the diverse surroundings the operation required a range of electronic and physical surveillance strategies to allow evidence to be gathered on the principal targets and others known to be engaged in similar activities. The tactical phase of this operation closed on 8 December 2004 with the simultaneous execution of search warrants on 26 premises throughout South-East Queensland. Property seized on the day included 6000 pseudoephedrine-based tablets; small amounts of cannabis, including plants; ecstasy tablets; water pipes; syringes; and 56 items of illicit laboratory equipment, found at two properties.
- ▶ **Internet paedophile.** Examination of a target's computer in an internet paedophilia matter identified three previously unknown child victims and ultimately resulted in the target's conviction on four counts of unlawful carnal knowledge of a child, 13 counts of indecently dealing with a child, and three counts of unlawful sodomy. This examination also identified two additional targets.
- ▶ **Extortion attempt.** All areas of Operations Support were involved in a recent misconduct investigation involving a QPS officer attempting to extort \$8000 from a member of the Mareeba community. Members of the Physical Surveillance and Technical Surveillance Units flew to Mareeba at short notice and helped investigators with covertly monitoring the exchange of money to the police officer. The investigating officers also seized computer components that were subsequently examined by the Forensic Computing Unit. The subject officer was charged, and the matter is now before the courts.

## Operational capacity enhancements

### Multi-skilling of staff

In order to bolster our operational capacity, it is planned to cross-train a number of witness protection officers as surveillance officers later this year; similarly, a surveillance officer will be undertaking the Witness Protection Course, also being conducted in 2006. This multi-skilling program will allow greater flexibility in the deployment of staff, enabling them to respond to the ebb and flow of workload demands experienced between the specialist Witness Protection and Surveillance Units.

## Training

### PHYSICAL SURVEILLANCE UNIT

Members of the Physical Surveillance Unit continue to ensure their skills are maintained, through participation in recognised training processes. Training of new staff is currently being conducted on a one-to-one basis by qualified surveillance officers. Once the new officers complete their training they will then be placed in a fully operational team, with ongoing assessments conducted by team leaders. Team leaders have found that officers so trained are well prepared to fit within an operational team.

### TECHNICAL SURVEILLANCE UNIT

The unit undertakes a variety of training regimes, which include physical fitness training, installation techniques, electrical testing procedures and the safe use of various items of machinery relevant to their duties. Officers also fulfil their requirements under workplace health and safety legislation by maintaining current qualifications in first aid, pole top rescue and working at heights.

The officer in charge of the unit is also currently involved in providing expert knowledge into the CMC's digital migration project whereby all video and voice recordings will utilise digital technology.

### FORENSIC COMPUTING UNIT

Due to rapid advances, members of the Forensic Computing Unit maintain a close liaison with industry bodies and law enforcement training facilities to ensure that they remain up-to-date with current and emerging technology. The CMC also ensures that officers working in the unit are provided with high-level specialist training to industry standards, enabling them to give expert evidence where required.

## Chapter 9: Engagement in public policy

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Over the past three years the CMC has been engaged in an increasing number of projects with a significant public policy focus. These projects originate in one of three ways:

- ▶ arising from investigations
- ▶ as a referral from our minister under section 52(1)(c) of the CM Act
- ▶ owing to a requirement in legislation other than the CM Act.

### PROJECTS ARISING FROM INVESTIGATIONS

Over the years the CMC and its predecessor, the CJC, have produced a number of major reports on social policy issues confronting government that have arisen out of our misconduct investigations. The first of these was the 1995 CJC report into client abuse at the Basil Stafford Centre (a state-administered residential facility for people with intellectual disabilities). The depth of our in-house investigative expertise, coupled with our legal and social science research expertise, enabled us to identify systemic failures and make proposals for practical policy reforms.

In the last three years, following in the tradition of the Basil Stafford Centre report, the CMC has engaged in two major public policy projects culminating in the following reports:

- ▶ *Seeking justice: an inquiry into the handling of sexual offences by the criminal justice system* (2003)
- ▶ *Protecting children: an inquiry into abuse of children in foster care* (2004).

### Seeking justice (2002–03)

This inquiry was prompted by the public furore over the decision by the DPP to drop charges of indecent dealing against Mr Scott Volkens, a well-known Australian swimming coach. Comment by political leaders and in the media over the handling of the Volkens case raised concerns about how the QPS and the DPP were handling sexual offence matters. Questions were also raised regarding the sufficiency of laws relating to the naming of people accused of such offences during the criminal justice process.

In September 2002 the CMC sought permission from the Premier to conduct the inquiry and in October of that year called for submissions. We received written submissions from eight government departments and agencies, 10 legal organisations, 10 community organisations, two media groups, three academics and 39 individuals. Most of the individual submissions were from people with first-hand experience of the criminal justice process, either as victims or as alleged perpetrators.

Two days of public hearings were held in November 2002, at which 21 witnesses appeared and the views of a range of organisations and individuals were publicly presented for examination. Researchers also reviewed local and international literature relevant to the terms of reference, and analysed police and court data to assess recent trends in Queensland. Twenty consultations were conducted with academic, community, government and legal agencies (including the judiciary) and individuals. In addition, more than 75 callers made telephone submissions. Information from the separate Volkens investigation was also considered. The

report of the Volkert investigation, entitled *The Volkert case: examining the conduct of the police and prosecution*, was published in March 2003 and the report of the public inquiry, *Seeking justice: an inquiry into how sexual offences matters are handled by the Queensland criminal justice system* was published in June that same year. The latter report contained 24 recommendations for reform of the criminal justice system. The aims of the recommended reforms were to:

- ▶ improve the collection and dissemination of forensic evidence, including interview material, for the prosecution of sexual offences
- ▶ reduce the stress associated with the criminal justice process for victims and the accused
- ▶ improve the timeliness with which sexual offence matters are handled
- ▶ build community confidence in the fairness and objectivity of the process
- ▶ improve court proceedings by having better-prepared police briefs and earlier legal intervention
- ▶ improve training for all police officers in the sexual offence squads
- ▶ improve supervision and communication practices within the QPS.

Recommendation 24 of the report states:

That the Crime and Misconduct Commission review the implementation of the Commission's recommendations arising from the Inquiry into the Handling of Sexual Offence Matters by the Criminal Justice System, and report to Parliament in two years' time.

Accordingly, submissions were sought reviewing the implementation to date of the 24 recommendations made. In their submission to the CMC in April 2006 the QPS and the ODPP reported that implementation of most of the recommendations was either completed or well under way.

We are now working on our report to parliament.

## **Protecting children (2003–04)**

During 2003 information came to light from various sources indicating that the foster care and child protection systems in Queensland, as administered by the Department of Families, had failed many children. The evidence pointed to systemic failures over many years to prevent children placed in foster care from being further abused or neglected. In July 2003 the Premier referred these concerns to the CMC, which responded immediately by launching two major misconduct investigations and an independent public inquiry.

This was a large undertaking for the CMC, involving numerous staff from across the organisation. The inquiry, including publication of the report, *Protecting children: an inquiry into abuse of children in foster care*, was completed in under six months.

The report was the product of three separate but interrelated exercises, Operations Zellow and Ghost, and Project Park. Operations Zellow and Ghost focused on two particular foster families, while Project Park was concerned with the more general question of how the foster care system in Queensland could be made to operate more effectively. Project Lucid was the name of the project that coordinated and drew together these three exercises.

The 400-page report handed down in January 2004 contained 110 recommendations for reform, including a recommendation for the creation of a new department — the Department of Child Safety.

The Queensland Government resolved to adopt all 110 recommendations proposed by the CMC. The child protection system in Queensland has undergone what is arguably the most substantial reform in its history as a result of the CMC's recommendations, and work is continuing to build a better system to protect our children.

In the report, the CMC recommended that the Queensland Government report on progress of the implementation of reforms within two years of the original report. The government and the Commission for Children and Young People and Child Guardian provided implementation reports to the CMC in January 2006 and we are currently reviewing those reports. We expect to issue a public report of our review in the second half of 2006.

## REFERRALS FROM THE MINISTER

Under section 52(1)(c) of the CM Act the CMC has a function to 'undertake research into any other matter relating to the administration of criminal justice or relating to misconduct referred to the commission by the Minister'. In the past three years, the CMC has received referrals under this provision to conduct research into the live adult entertainment industry and into police radio communications.

### Live adult entertainment industry (2003–04)

In 1999 the Queensland Government established a new regulatory framework for live adult entertainment, and in late 2003 the CMC was asked to evaluate this framework. Under referral from the Premier (our minister at the time), we were charged with reviewing the effectiveness of the regulations governing Queensland's live adult entertainment industry. We examined both the regulated and unregulated adult entertainment industry and looked at options to improve the current regulatory framework.

Our review was restricted to considering the provision of live adult entertainment — that is, the performance of sexually explicit acts for an audience — whether regulated under the *Liquor Act 1992* or unregulated. We focused on whether there was a need to extend regulation of the adult entertainment industry to address specific concerns such as:

- ▶ the possible entry of criminals and their associates into the industry
- ▶ the possible exploitation of minors
- ▶ possible effects on the amenity of local communities.

The Queensland Government imposed a regulatory framework on adult entertainment and prostitution in 1999 through the enactment of the *Prostitution Act 1999* and amendments to the *Criminal Code 1989* and the *Liquor Act 1992*. Our review of the live entertainment regulatory framework complemented our review of the Prostitution Act (see below). Taken together, these reviews provide a comprehensive analysis of Queensland's sex industry, both regulated and unregulated, and provide the basis for any necessary regulatory change.

Our researchers visited a range of sites, interviewed key people in the industry and consulted with relevant government and non-government stakeholders. Our evaluation, *Regulating adult entertainment: a review of the live adult entertainment industry in Queensland*, published in December 2004, shows that the current regulatory system works well, but should be strengthened and extended. We made 29 recommendations, which included full regulation of the industry to minimise opportunities to exploit minors, reduce negative impacts on the community and deter organised crime.

The Queensland Government supported or partially supported 21 of our recommendations, rejected five and deferred another three for further consideration. Cabinet agreed to draft stand-alone legislation, and the Liquor Licensing Division will develop and administer the regulation of the Adult Entertainment Bill 2006. The proposed legislation will seek to strengthen the existing regulatory framework by providing a permit system for adult entertainment in both licensed and unlicensed premises, and limiting the type of permitted activities to those currently allowed in licensed premises holding an adult entertainment permit under the Liquor Act. Existing administrative arrangements will also be strengthened to ensure that the Liquor Licensing Division has appropriate powers to regulate the industry.

### **Police radio communications (2004)**

In the wake of the QPS's decision in early 2004 to begin a roll-out of digital radio technology, we were asked by the Premier to determine what level of access, if any, the media should have to police radio communications.

The ensuing public inquiry (held over four days in July 2004) required the Commission to consider the issues of freedom of the press and the media's role in a democratic state, within the context of modern policing.

The public hearings enabled us to explore options with people who were closely associated with the issues or were representatives of organisations identified by the CMC as having a particular interest or expertise.

In December 2004 we tabled in parliament our report of the inquiry, entitled *Striking a balance: an inquiry into media access to police radio communications*.

In the report the Commission made 14 recommendations to ensure efficient, transparent and technically feasible information-sharing practices between the police service and the media in Queensland, while simultaneously protecting the privacy of individuals and ensuring confidentiality. The recommendations balanced individual privacy, operational security and public safety considerations against the need for high levels of transparency and accountability in policing.

Immediately after the inquiry, the QPS formed a working party to study the feasibility of implementing the CMC's recommendations. Recently, the QPS provided a demonstration of the QPS media feed to the Queensland media, which was well received. Currently, the QPS is engaged in discussions with information technology staff from the different media to set up the necessary electronic links to deliver the feed. The QPS envisage that a trial of the media feed will begin in June 2006.

## OTHER LEGISLATIVE REQUIREMENTS

As well as the research functions set out in the CM Act, the CMC is increasingly required to conduct research under provisions inserted into other legislation, such as the *Prostitution Act 1999*, the *Police Powers and Responsibilities Act 2000* (PPRA) and the *Summary Offences Act*.

### Review of the Prostitution Act (2004)

The *Prostitution Act 1999* required us to review the Act's effectiveness as soon as practicable after three years from its commencement, and report on those findings.

Accordingly, in December 2004 we published *Regulating prostitution: an evaluation of the Prostitution Act 1999 (Qld)*. The evaluation delivered an accurate assessment of the operation of the Act and the achievement of its core function — to regulate prostitution in Queensland.

Our report found that 'Queensland now has a safe and effective legal brothel industry, albeit one that is much smaller than originally envisaged; it is better, we believe, than that of any other state in Australia'.

At the same time we called for minor amendments to the Act to ensure the legal industry's continued viability and to reduce the incentives for the illegal industry to continue.

One of the key recommendations of the report was that the CMC extend its review to examine the question of whether escort or outcall prostitution services should be legalised in Queensland and, if so, how this could best be done (see below for further details).

On 28 March 2006 the Prostitution Amendment Bill was introduced to Parliament. The Minister for Police and Corrective Services, when introducing the Bill, stated that the Bill implemented 17 of the 29 recommendations made by the CMC in the *Regulating prostitution* report. She stated that a further three issues would be dealt with in a regulation to be developed in the next six months. The Bill contains 41 clauses, many of which relate to the CMC's review and recommendations.

### Escort or outcall prostitution services (2005)

In March 2005 we published a discussion paper and invited key stakeholders and members of the public to give us their views. A public hearing on this matter was conducted in September 2005.

In December 2005, after the public hearing and the collection and collation of relevant material about escort services throughout Australia and internationally, we released an interim paper entitled *Should legal outcall prostitution services in Queensland be extended to licensed brothels and/or escort agencies?* That paper contained a proposed model for reform. It invited key stakeholders and the public to provide comment on our model by 31 January 2006.

We received more than 40 submissions before the public hearing and a further 20 about our proposed model. It is our intention to publish a final report by mid-2006.

## Government's response to volatile substance misuse (2002–05)

The misuse of volatile substances (often referred to as 'chroming' or 'sniffing') is not a crime in itself, but is often a sign of serious social disorder in individuals and communities.

Under section 371E of the PPRA, we were required to review the trial police powers contained in sections 371B–D of the Act. These powers were enacted as a response to the misuse of volatile substances, and were intended to enable police to respond effectively to people affected by a volatile substance by taking them to a safe place where they could recover. These 'places of safety' were a Department of Communities initiative.

Between 1 July 2002 and 31 March 2005, we evaluated the 'trial' powers, which were exercised only for a defined period in five specified areas (Brisbane central, Logan, Townsville, Mount Isa and Cairns).

The report, *Police powers and VSM: a review*, was tabled in parliament in September 2005. On the whole, the CMC evaluation found that the trialed police powers were a useful component of the broader response by government to the difficult issue of VSM, and that, with some enhancements (e.g. giving the police the power to hold a person affected by VSM for a limited period, and the power to require a person affected by VSM to supply their name and address) they should be retained and extended statewide.

Because of our obligation to review the new police powers related to volatile substance misuse, the Department of Communities requested that we also evaluate the success of the places of safety model.

The Commission considered the request in light of its statutory responsibilities and the requirement to review the supporting police powers. Given these responsibilities — and the CMC's crime prevention function — the Commission determined that undertaking such an evaluation was appropriate as well as of significant public benefit.

This evaluation, which occurred between 1 July 2004 and 30 March 2005, combined survey research, focus groups, administrative data, stakeholder interviews and community level socio-demographic data drawn from five trial sites across Queensland in order to identify the strengths and limitations of the places of safety model.

A confidential report was provided to the Department of Communities in September 2005 and a summary of the report — *Responding to volatile substance misuse: evaluation of the places of safety model* — was published at the same time.

## Review of public nuisance provisions (2006)

We are currently conducting a review of the public nuisance provision of the *Summary Offences Act 2005* (SO Act), which was passed by parliament in February 2005. This new Act replaced the *Vagrants, Gaming and Other Offences Act 1931* (VGOO Act) and reformulated a number of street offences. In particular, the SO Act is intended to repeal those provisions of the VGOO Act that were no longer relevant to Queensland society, and to ensure that more recent phenomena, such as chroming, were specifically covered. The SO Act deals with such matters

as the quality of community use of public places, and offences relating to piercing and tattooing of children.

Section 7AA(6) of the VG00, which required the CMC to undertake a review of the operation of the public nuisance provision of that Act after 18 months, was carried over into section 6 of the SO Act. The provision came into force on 1 April 2005 and the CMC's review started in October 2005.

Work is under way to collect and analyse relevant police data concerning public nuisance. At the time of preparing this report, a discussion paper is being finalised and public submissions will be called for in the near future.

## Review of the 'motorbike noise' provisions (2006)

On 4 October 2005 the PPRA (Motorbike Noise) Amendment Bill was introduced to Parliament. This Bill proposed legislation enabling police to 'take enforcement action against drivers of motorbikes that create excessive noise on places other than roads'. The legislation is reported to arise from repeated complaints regarding motorbike noise, and proposes giving:

- ▶ police the power to act on a complaint about nuisance trail bike riding
- ▶ police the power to enter properties in order to properly investigate complaints of nuisance trail bike riding
- ▶ police the power to act immediately on complaints without first having to visit the complainant, and thereby protect the identity of complainants
- ▶ police the power to issue 48-hour noise abatement orders to motorbike drivers responsible for the noise that resulted in the complaint
- ▶ courts the power to impose restrictions on the use of trail bikes — including the times, places and manner in which they can be used
- ▶ police the power to seize bikes for 48 hours if noise orders are breached
- ▶ police the power to seek court-ordered permanent confiscation of motorbikes from repeat-offending riders.

Section 25 of the PPRA (Motorbike Noise) Amendment Bill requires that the CMC undertake a review of the PPRA (Motorbike Noise) Amendment Act one year after implementation. To date, the legislation has not been enacted.

Preliminary research is under way to ensure that appropriate data are captured for the pre-evaluation period and for the first year of operation (the evaluation period). The project will commence in full when one year has elapsed.

## FUTURE DIRECTIONS

We welcome our increasing involvement in public policy issues, in recognition of our role as an independent agency committed to rigorous, non-partisan analysis leading to practical recommendations.

However, we are also conscious of the significant resources required for these major projects. To date, the projects have been funded from our existing budget and, if the number of public policy projects continues to increase, this is likely to have an adverse impact on our ability to fulfil our other research functions — namely, to conduct research to support our crime and misconduct functions and to conduct research into policing issues.

With the increasing number of issues of public policy referred to us, we are finding it difficult to meet our requirements for reporting our performance. This has led us to consider our output reporting structure, and may lead to future reporting of involvement in public policy issues as a separate output.

## Chapter 10: Accountability and corporate governance

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The CMC's accountability and corporate governance infrastructure is founded on principles of openness, integrity and accountability. The infrastructure helps the CMC plan, organise, manage and monitor its operations, performance and internal controls, and achieve best practice.

### INTERNAL ACCOUNTABILITY

#### The Commission

The CMC is headed by a five-member Commission comprising the Chairperson and four part-time Commissioners who represent the community. The Commission has primary responsibility for achieving the purposes of the CM Act.

Each fortnight the Commission meets formally to consider issues relating primarily to the strategic direction of the organisation. However, in guiding and maintaining the focus of the organisation, it also discusses matters affecting all areas of the organisation, including financial, staffing and managerial issues, specific crime and misconduct operations, research and intelligence projects, and capacity development and misconduct prevention activities. A typical agenda includes:

- ▶ examination of the work of the various functional areas from a strategic point of view
- ▶ a decision about whether a draft report should be issued or revised
- ▶ consideration of whether a matter should be referred for prosecution or disciplinary action
- ▶ discussion of any managerial issues.

During the period 1 January 2005 – 31 March 2006 the Commission met 35 times, of which four were special meetings; and it met with the PCMC five times.

#### Current CMC Commissioners

The current Commissioners of the CMC are: Mr Robert Needham (Chairperson), the Honourable Douglas Drummond QC, Ms Julie Cork and Dr David Gow. An existing vacancy on the Commission was created when, in December 2005, Commissioner Suzette Coates was appointed a Stipendiary Magistrate.

##### ROBERT NEEDHAM (CHAIRPERSON)

Mr Needham, who has a Bachelor of Laws from The University of Queensland, was appointed to the position of Chairperson in January 2005. Before then he practised as a barrister for 35 years. His career including periods as a Crown Prosecutor and as a barrister in private practice.

In late 1987 Mr Needham was appointed Counsel Assisting the Fitzgerald Commission of Inquiry. He subsequently became involved in the political corruption investigations arising out of the inquiry, forming a team in the Special Prosecutor's Office to finalise briefs and prosecute the political corruption trials.

Afterwards, Mr Needham was involved in various corporation law prosecutions for the Australian Securities and Investment Commission and the Commonwealth Director of Public Prosecutions, including the Christopher Skase prosecution. He

was also involved in complex and lengthy cases in the Land Court and the Planning and Environment Court.

Mr Needham was the Parliamentary Crime and Misconduct Commissioner from 2002 to 2004.

#### **THE HONOURABLE DOUGLAS DRUMMOND QC**

The Honourable Douglas Drummond QC was a judge of the Federal Court of Australia for more than 11 years before retiring in April 2003. Mr Drummond's legal experience spans 38 years, and includes a three-year appointment in 1988 as Special Prosecutor with responsibility for the investigation and prosecution of offences arising out of the Fitzgerald Commission of Inquiry. He has also practised as a barrister at the private Bar, specialising in general commercial litigation and arbitration.

#### **JULIE CORK**

Ms Julie Cork has a Diploma in Teaching and a Bachelor of Education Studies, and more than 25 years' experience in organisational management policy and practice. In addition, she has extensive knowledge in the more sensitive areas of human resource management, including the recruitment of people with disabilities and Aboriginal and Torres Strait Islander peoples.

Ms Cork has undertaken organisational change work in association with the establishment of employment equity programs, in both the Australian and the Queensland public sectors. In August 1991 she was appointed Manager, Employment Equity, at the Public Sector Management Commission, with responsibility for the Queensland public sector.

Since 1996, Ms Cork has worked as a consultant in the private, public and community sectors.

#### **DR DAVID GOW**

Dr David Gow is currently a senior lecturer at The University of Queensland Business School. He is an Honours graduate from the University of Sydney and received his PhD from the University of Hawaii in 1981.

Dr Gow's main expertise is in public administration and political science, in which he has held various academic appointments over the past 23 years. He also has considerable experience in research methodology, having worked extensively as a consultant to the Queensland Government, and to the CJC between 1991 and 2000.

### **The Strategic Management Group**

The role of the Strategic Management Group (SMG) is to manage the organisation within the parameters of delegations afforded and strategic directions established by the Commission. In addition, the SMG selects and oversees the major operational and administrative projects undertaken by the organisation, in line with corporate priorities, objectives and statutory responsibilities.

The SMG is led by the Chairperson and comprises 11 members, representing the following areas: Crime, Crime Investigations, Misconduct, Misconduct Investigations, Complaints, Research and Prevention, Intelligence, Witness Protection and Operations Support, Information Management, and Corporate Support.

The charter of the SMG outlines its role and responsibilities. Minutes of the meetings are produced to record decisions and actions and to ensure the charter is adhered to.

The SMG currently comprises 10 members

## Management committees

The CMC has a comprehensive committee structure to ensure that it plans, organises, manages and monitors its operations, performance and internal controls, and strives to achieve best practice.

Listed below are the internal committees currently in operation, with a brief outline of their purpose.

**Audit Committee.** Provides independent advice to the Commission on determining potential risks to the CMC and where the main thrust of the audit functions should be directed.

**Commission Consultative Committee.** Provides an effective forum where employees and senior management can exchange ideas, concerns and points of view.

**Equal Employment Opportunity Consultative Committee.** Provides advice to management in relation to discrimination and EEO matters, and provides a forum where staff can raise matters of interest and concern.

**Finance Committee.** Assists the Commission by providing high-level advice and expertise with managing the budget process, and ensuring that there are appropriate and effective financial management practices.

**Information Steering Committee.** Provides advice concerning the development of the CMC's strategic plan for its information systems and information infrastructure.

**Legislation Committee.** Monitors state and federal changes to legislation and activities that are likely to affect the work of the CMC.

**Risk Management Committee.** Provides advice about robust and effective risk management strategies to ensure that the CMC maintains appropriate fraud minimisation strategies.

**Workplace Health and Safety Committee.** Monitors the CMC's performance in providing a safe and healthy environment for its employees.

**Other management committees.** There are six committees that deal specifically with operational matters: the Misconduct Operations Review Committee, the Misconduct Assessment Committee, the Capacity Development Review Committee, the Crime Operational Review Committee, the Crime Intelligence Review Committee and the Witness Protection Advisory Committee.

## Internal audit

The CMC has a part-time Internal Auditor who is administratively responsible to the Executive Director and reports directly to the Chairperson through the Audit Committee. The independent internal audit function is an integral part of the CMC's corporate governance framework. The function operates under a formal charter approved by the Commission, and its activities are monitored by the Audit

Committee. Its role is to conduct independent audits as a service to management, and to help management achieve sound managerial control. Where necessary, additional external resources are used to ensure effective audit coverage.

The Internal Auditor acts independently of the Audit Committee but has a standing invitation to attend committee meetings. The role of the Internal Auditor includes undertaking regular appraisals within the CMC, offering independent confidential advice on action to improve the efficiency and effectiveness of the CMC, contributing to the integrity of the annual financial statements, checking actions taken by line management on recommendations reported and accepted by the Chairperson, and providing advice to management on governance, management and accounting matters.

## Financial management and performance management

The CMC operates in an accrual output-based financial management framework, where all senior managers are responsible and accountable for the achievement of corporate goals and objectives within approved budget allocations. The Finance Committee assists the Commission with managing the budget process and ensures that the CMC's financial management practices are appropriate and effective.

The CMC reports through:

- ▶ the annual Ministerial Portfolio Statement (MPS)
- ▶ financial statements for inclusion in the annual report
- ▶ an internal budget reporting regime
- ▶ six-monthly reports under section 260 of the CM Act.

The CMC reports on its operational performance through narrative reports and statistical information. Narrative reports on the success of investigations and projects are provided through the annual report, other publications and the website. Statistical information about our activities can be found in the annual report. Operational performance targets are reported to the minister and Queensland Treasury through the CMC's annual MPS (part of the State Budget Papers). These include a range of measures relating to aspects of quantity, quality, timeliness and cost. Performance reports are also regularly provided to the Queensland Treasury.

## Legislative compliance

The Commission and operational areas of the CMC receive independent legal advice on varied topics, including administrative and criminal law, contracts, personal injuries litigation and statutory interpretation.

Until 1 January 2005 this advice was provided by the Office of General Counsel, which consisted of General Counsel, the Official Solicitor, the Freedom of Information Coordinator and a legal officer.

In accordance with the recommendation made by the PCMC in the last three-yearly review, the Commission decided to review the functions of the Office of General Counsel with a view to increasing its capacity 'to provide independent, balanced and objective advice'.

The review was undertaken by then Commissioner Ray Rinaudo. On 19 November 2004 the Commission resolved that:

- ▶ General Counsel continue to report directly to the Chairperson and Commission
- ▶ a Legal Services Unit be established within the Office of the Commission
- ▶ the Official Solicitor, Legal Officer and Freedom of Information Coordinator (and Privacy Officer) be transferred from the Office of General Counsel to the Legal Services Unit
- ▶ the Official Solicitor be the manager of the Legal Services Unit
- ▶ General Counsel, the Official Solicitor and the Executive Director expedite the implementation of quality assurance systems and the development of appropriate policies and procedures.

The resolutions took effect on 1 January 2005.

## General Counsel

The role of General Counsel involves:

- ▶ providing independent legal advice to the Chairperson, Commissioners and senior officers in the administrative and operational areas of the Commission
- ▶ representing the Commission before courts and tribunals and presiding at in-house investigative hearings
- ▶ representing the Commission on various intergovernmental and interdepartmental committees and working groups, including groups examining new cross-border investigations legislation, whistleblower protection legislation, and the legislation governing telecommunications interception
- ▶ liaising with state government departments about amendments required to the CM Act and other legislation, to ensure the continued effective operations of the CMC.

## Legal Services Unit

The Legal Services Unit:

- ▶ represents the Commission in litigation before any court or tribunal
- ▶ engages and instructs external counsel or solicitors to represent the Commission before any court or tribunal, when appropriate
- ▶ provides independent and objective legal advice to the Commission and its officers
- ▶ determines applications for access to Commission documents made under the *Freedom of Information Act 1992* (FOI Act)
- ▶ handles matters concerning the privacy regime
- ▶ creates and maintains a legal advice database, and oversees continuing education for Commission lawyers.

## Freedom of information

The CMC is subject to the FOI Act, which means members of the public are entitled to apply for access to our documents under that Act.

However, the *Freedom of Information and Other Legislation Amendment Act 2005*, which received assent on 31 May 2005, introduced a new exemption provision that limits access. Section 42(3A) exempts information obtained, used or prepared for an investigation by the CMC or another agency where the

investigation is in performance of the CMC's crime and misconduct functions. It applies also to such information obtained, used or prepared by its predecessors, the CMC and the QCC, in the performance of the equivalent functions.

The exemption does not apply if a person seeks information about themselves and the investigation has been finalised.

The new exemption is considered necessary to ensure that the CMC can protect from disclosure information it receives from public sector employees who voluntarily assist it in the course of an investigation. It ensures that the CMC remains effective and affords employees who cooperate with its investigations the confidence to maintain their assistance. It is preferable to obliging the CMC to invoke its coercive powers in every investigation.

The amendment is expected to have only a minor impact on the number of applications received, as most applications are requests from misconduct complainants for access to documents concerning their own complaint.

## **Privacy legislation**

Since 2001, when Cabinet approved Information Standard 42, agencies have been required to review the way they handle personal information to ensure that they comply with the requirements of 11 Information Privacy Principles (IPPs). The CMC is exempt from IPPs 2, 3, 9, 10 and 11 for all functions except administrative ones. As a result, most of the CMC's core activities are excluded from the privacy scheme. In accordance with the requirements of Information Standard 42, the CMC has nominated a privacy contact officer, developed a privacy plan to give effect to the IPPs and published the plan on its website.

## **Charter of Service**

The CMC's Charter of Service sets out the standards that we undertake to meet when dealing with complaints about misconduct in the Queensland public sector. The charter also explains the service the complainant can expect from us, and their recourse if this service is not received. In April 2006 the charter was updated to accommodate the evolving role of the CMC and agencies in the management of complaints.

## **Resource management**

### **Human resources**

The CMC is dedicated to providing the best possible working environment for its staff of lawyers, police, accountants, investigators, intelligence analysts, social scientists, computing specialists, communication specialists, support officers and administrators, on the basis that a happier workforce is also a more stable and productive one.

It does this by offering working conditions similar to those of the state public service, including enterprise bargaining, and by adhering to government requirements on equal employment opportunity and workplace health and safety. In addition, it provides an employee support program, a training service, staff achievement awards, regular internal communication facilities, and a mechanism for staff to have their concerns heard by senior management.

## Organisation restructures

Two significant organisation restructures took place, one of the Office of General Counsel and the other affecting the former Intelligence and Information section.

In late 2004, the Mercer Group was engaged to review the organisational structure of Intelligence and Information. Its recommendation was to move the Information Technology and Records Management functions into Corporate Services, and make Intelligence a stand-alone function. The recommended revised structure was adopted by the Commission, effective as of January 2005.

## Organisational Climate Survey

In 2004 the CMC conducted an organisational climate survey to provide staff with an opportunity to voice their opinions and thoughts about the organisation.

As a result, a number of recommendations have been, or are being, implemented:

- ▶ Completion of a training needs analysis to help HR develop a more structured approach to satisfying staff development needs.
- ▶ Review of all position descriptions.
- ▶ Circulation of information of interest to all staff by direct email from senior managers.
- ▶ Other avenues to improve the flow of information throughout the organisation are being considered, including better use of the intranet.

## Work, Family and Life Balance Program

The CMC is about to implement a Work, Family and Life Balance Program which will incorporate flexible working hours, flexible leave provisions, flexible employment arrangements, and the maintenance of a workplace culture that supports employees in balancing their work and family and other responsibilities.

Significant data are now available on the impact of work, family and life balance programs in the public and private sectors. The benefits of such programs include improved retention rates, higher productivity, strengthened loyalty and morale, improved job satisfaction and a competitive edge in recruiting skilled staff.<sup>33</sup>

The chief challenge associated with the implementation of the Work, Family and Life Balance Program is expected to be the challenge of accommodating flexibility with operational demands and office accommodation. In order to address this, implementation plans include a series of workshops for supervisors and managers to outline the 'business case' for more flexible working arrangements. Managers will be encouraged to employ strategies such as effective use of salary budgets, relieving arrangements and changed workflows to offset the changes brought about by increased flexibility. Workshops will also be held to inform them of the Work, Family and Life Program.

## Workforce management planning

The Workforce Management Plan 2005–2009 has been endorsed by the Commission. The plan sets out the framework for a range of strategies focusing on attracting and retaining experienced staff, succession planning, and enhancing

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32. Business Council of Australia, *Work and family survey 2003*, pp. 10–11, <<http://www.bca.com.au/content.asp?newsID=92507>>.

management competency throughout the organisation. The plan also addresses major issues raised through the 2004 organisational climate survey. Components include:

#### SUCCESSION PLANNING

Incumbents of the 12 positions identified as the most critical for succession planning purposes have completed a Succession Management Capabilities questionnaire. One of the outcomes of this process to date has been the development of a draft capabilities framework, which will assist in effective recruitment for these positions when required, and in the provision of appropriate learning and development activities for existing staff.

#### STAFF TRAINING

**Leadership and Management Development Program.** Consultants working with senior CMC officers have been engaged to design and deliver a Leadership and Management Development Program during 2006. Forty-four officers are participating in this program, including the Chairperson and senior leaders. The program runs from March to October 2006; it requires attendance at four 2-day workshops, participation in individual and group projects, and individual coaching.

**Management Essentials Program.** This program is aimed at staff from the AO5/PO3 levels to the AO8/PO6 levels and involves completion of a number of competency-based workshops, aimed at providing participants who successfully complete all assessment requirements with a Diploma of Government (Management). This 12-month program begins in May 2006.

This program has been selected as a strategy for increasing management competency at lower levels of management.

**Other accredited training.** The Crime and Misconduct Commission Certified Agreement 2003 provides an opportunity for staff at the AO2, AO3 and AO4 levels to study towards an accredited qualification at the Certificate IV (AO2), Diploma (AO3) or Advanced Diploma (AO4) level at no cost to the employee.

Most staff who have attempted this study to date have found it difficult to balance the competing demands of work, family responsibilities and study commitments, particularly in cases where they have not studied for some years. Consequently, a new approach has been adopted, enabling staff to undertake this study in a series of competency-based workshops during normal working hours on CMC premises.

The first program begins in May 2006 and will enable participants to attain a Certificate IV in Government within 12 months. The program is open to all staff at the AO2 to AO4 levels and will provide for straightforward advancement to Diploma and Advanced Diploma qualifications.

**Training needs analysis.** The course requirements for the Diploma of Government (Management) and the Certificate IV in Government require participants to complete a number of mandatory units as well as a number of elective units.

A focused training needs analysis has been undertaken to ascertain the views of staff and management on the relative need for each of the potential elective units. Responses have been analysed and each course developed to take account of the highest-priority needs from both an individual and an organisational perspective.

## GRADUATE PROGRAM

This initiative is aimed at recruiting graduates in relevant disciplines to undertake a structured 12-month development program in the CMC. Once funding is finalised, applications will be invited from people seeking employment in the fields of law, commerce, social science, intelligence and information technology.

## INTERNSHIP PROGRAM

The CMC has entered into an arrangement with the Queensland University of Technology to assist final-year law students with one of their final units of study. This will require students to work at the CMC for one day per week for 12 weeks. Two students are participating in this program during Semester 1, 2006. One student has been allocated to the Legal Services Unit and the other to Research and Prevention.

## EEO program

The Equal Employment Opportunity (EEO) program, including measures to eliminate sexual harassment and workplace harassment, will have a continuing impact on retention rates of EEO target group members, particularly women, who comprise over 50 per cent of the CMC workforce. It is anticipated the Work, Family and Life Balance Program will increase return rates of women from parental leave and generally increase retention rates of employees with family responsibilities.

The continuing use of exit interviews highlights any systemic issues that require attention from a staff retention perspective.

## Staff accountability

The Act requires the Chairperson to report to the PCMC any conduct of a CMC officer that the Chairperson suspects involves or may involve improper conduct (s. 329). The Act also provides for a wider definition of CMC officers, by including former officers, and specifically allows the PCMC to request reports in respect of these matters.

Taking into account the definition in section 329, the staff protocol for dealing with complaints against CMC officers has been reviewed. The revised protocol is currently with the PCMC for consideration.

## EXTERNAL ACCOUNTABILITY

Although the CMC is an independent statutory body separate from the government of the day, it is accountable for its actions through a variety of mechanisms, the principal one being the PCMC.

## The PCMC

The PCMC is a seven-member, all-party committee of the Queensland Legislative Assembly established to:

- ▶ monitor and review the performance of the CMC
- ▶ review CMC reports, including the annual report and research reports
- ▶ request reports on matters that have come to the CMC's attention through the media or by other means

- ▶ receive and consider complaints against the CMC, and deal with issues concerning the CMC as they arise.

The Commission formally meets with the PCMC on a regular basis (usually every two months) to discuss current activities and performance. A comprehensive report, which details the CMC's activities during the reporting period, is prepared for the PCMC in advance of these meetings.

## Other

### Parliamentary Crime and Misconduct Commissioner

The Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) assists the PCMC in its role of monitoring and reviewing the CMC.

The Parliamentary Commissioner, at the PCMC's direction, investigates complaints against the CMC or its officers, and conducts audits and reviews of the CMC's activities. The Parliamentary Commissioner's powers include the ability to require CMC officers to give evidence at a hearing, and to require the production of records, files and other documents.

The PCMC may also direct the Parliamentary Commissioner to audit and review the CMC's activities. Each year the Parliamentary Commissioner submits an audit of the CMC to the PCMC.

### The minister

The Honourable Peter Beattie MP, Premier and Minister for Trade, was the minister responsible for the CMC until August 2005 when the Attorney-General and Minister for Justice, the Honourable Linda Lavarch MP, became the CMC's minister.

The minister participates in the selection of the Chairperson, Commissioners and Assistant Commissioners, approves staff remuneration conditions and approves the CMC's budget. Also, the legislation requires the minister to ensure that the CMC operates in accordance with best-practice standards.

To assist the minister in this regard, the CMC reports on the efficiency, effectiveness, economy and timeliness of its operational processes every six months through a written report under section 260 of the CM Act.

Section 347 of the CM Act provides for the minister to review the Act and the CMC's operational and financial performance. Accordingly, in September 2004 the Premier produced a 'Review of the Crime and Misconduct Commission'. This report contained 16 recommendations addressing various aspects of the CMC's operations.

In February 2005 the Commission advised the Premier of the action taken on each recommendation, and its current status. Only one recommendation could not be implemented.

An update on progress was provided in May 2005 in response to the Premier's follow-up on the implementation of the report's recommendations. It explained the CMC's continuing work to action the recommendations.

## **Crime Reference Committee**

The Crime Reference Committee, established under section 274 of the CM Act, has responsibility for referring major crime to the CMC for investigation. It also has a coordinating role for investigations into major crime conducted by the CMC in cooperation with any law enforcement agency.

The committee is chaired by the Assistant Commissioner, Crime, and consists of the Chairperson of the CMC, the Commissioner of Police, the Commissioner for Children and Young and People and Child Guardian, and two community representatives.

## **Public Interest Monitor**

The Public Interest Monitor monitors applications for, and the use of, surveillance warrants and covert search warrants under the CM Act and the PPRA.

The Public Interest Monitor has the following functions for surveillance warrants and covert search warrants:

- ▶ to monitor compliance by the CMC in relation to matters concerning applications for surveillance warrants and covert search warrants
- ▶ to appear at any hearing of an application to a Supreme Court judge or magistrate for a surveillance warrant or covert search warrant, or to test the validity of the application
- ▶ to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants
- ▶ whenever it is considered appropriate, to give to the Commission a report on noncompliance by the CMC.

## **Supreme Court**

Many of the CMC's coercive powers may be exercised only with the approval of a Supreme Court judge. These include:

- ▶ a search warrant (where structural damage may occur)
- ▶ a covert search warrant
- ▶ a surveillance warrant
- ▶ a notice requiring immediate attendance at a hearing
- ▶ monitoring and suspension orders on financial institutions
- ▶ an arrest warrant for non-attendance
- ▶ an additional powers warrant.

The CMC is also subject to review in the Supreme Court in the following cases:

- ▶ A person who believes that they are being investigated unfairly by the CMC may apply to the Supreme Court for relief.
- ▶ The Supreme Court may decide issues of privilege raised by a person under investigation either at first instance or by reviewing a decision made by a presiding officer at a CMC hearing.

There have been no successful applications against the CMC during the reporting period.

## **Controlled Operations Committee**

The Controlled Operations Committee was established under the PPRA to consider and make recommendations about applications for 'controlled operations' to be undertaken by the QPS or the CMC. Controlled operations are investigations of serious indictable offences, misconduct or organised crime that involve police officers and others engaging in activities that may be unlawful.

The committee, chaired by a retired District Court judge (the independent member), comprises the Commissioner of Police (or nominee) and the Chairperson of the CMC.

In the case of any controlled operation by the CMC that involves the investigation of a police officer, the Chairperson may approve the application without referring it to the Committee, but must first contact the independent member and obtain the member's agreement to the proposed operation.

## Chapter 11: Conclusions

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This submission shows how the CMC's work now needs to extend beyond its primary role of investigating crime and misconduct.

In relation to reducing misconduct and improving public sector integrity, we need to provide the leadership, framework and incentives for public sector organisations to improve themselves. The CMC must continue to develop its broadened focus and maintain its increased commitment to working with other agencies. These activities will help to entrench integrity as the first line of defence against misconduct. At the forefront will be our prevention and capacity-building initiatives, which are vital for the achievement of an accountable and ethical public sector.

Our recent achievements have demonstrated that the independence of the CMC makes it ideally suited to examining and evaluating state legislation, government initiatives and police powers. Our role in foster care reform, the debate on police radio communications and the review of prostitution legislation are examples of our constructive engagement in issues of social policy.

The changes occurring in the CMC's research role, where it performs statutory functions not directly related to core business, and the increasing significance of its role in recovering the proceeds of crime, may suggest that it is now appropriate to consider the adequacy of the CMC's current MPS output structure. Existing outputs may require adjustment to accommodate the organisation's changing role, or require expansion to fully account for the performance for which it is responsible. Options in relation to this issue will be explored in 2006–07.

The challenges in respect of our crime-fighting obligations are no less significant than those for our other areas of activity. The CMC must continue to work with other agencies to maximise results. In doing this it must remain committed to maintaining an edge in its use of up-to-date technology in investigations; it must continue to identify and pursue investigation targets offering opportunities to cause the greatest possible disruption to unlawful activities; and it must continue to pursue and refine its already successful criminal proceeds confiscation activities.

### **The CMC draws the PCMC's attention to these points made throughout this submission:**

- ▶ The CMC considers that its current powers to hold public and closed hearings are appropriate and effective, subject to a proposed amendment to the CM Act that will allow the Assistant Commissioner, Crime, or the Assistant Commissioner, Misconduct, to preside at public hearings, as well as the Chairperson.
- ▶ The CMC is of the view that the investigative powers currently given to it under the CM Act for its crime, misconduct and civil confiscation jurisdictions should be maintained.
- ▶ The CMC agrees that the issue of which matters should be referred to the DPP can be dealt with on an administrative basis and that legislative amendment is not required to allow police officers seconded to the CMC to charge in appropriate cases.
- ▶ The CMC submits that the Criminal Proceeds Confiscation Act should contain express provisions concerning its application to property held outside Queensland, including property held offshore. Its current failure to do so

represents a major inadequacy in the legislation and provides a simple means of avoiding its application.

- ▶ The CMC submits that the current provisions be separated to distinguish between administrative orders and investigative orders, notice be required for administrative orders, but that investigative orders be available only to the state and be available ex parte.
- ▶ The CMC submits that, subject to the decision of the Court of Appeal, the legislation make clear the scope of examination powers under the Criminal Proceeds Confiscation Act.
- ▶ The CMC submits that provisions be inserted into the Act clarifying derivative use of examination evidence and the admissibility of examination transcripts in confiscation proceedings.
- ▶ The CMC submits that the reversal of the onus of proof relating to proceeds assessment applications ought to be consistent with the onus in respect of forfeiture, in order to give full effect to the objects of the legislation.
- ▶ The CMC submits that the making of a pecuniary penalty order ought not to prevent the court from later making a proceeds assessment order based on the same serious crime-related activity, but that the amount of any pecuniary penalty should be taken into account in the making of a subsequent proceeds assessment order.
- ▶ The CMC submits that the ability of the court to make orders substituting other property, instead of the disposed property, in a forfeiture order would render ineffective attempts to dispose of forfeitable property and give full effect to the objects of the Criminal Proceeds Confiscation Act.
- ▶ The CMC submits that penalty provisions should attach to noncompliance or, alternatively, forfeiture of non-disclosed assets should be available under provisions similar to recent amendments to the New South Wales civil confiscation legislation (see ss. 31A, 31B and 31C of the *Criminal Assets Recovery Act 1990* (NSW)).
- ▶ The CMC submits that the legislation should be amended to make clear the conditions precedent to the Public Trustee recovering its fees, charges and outlays.

## Recommendations concerning the CMC's special investigative powers

Power	Recommendation
Private entities exercising public functions	The CMC continues to be of the view that private entities that carry out public functions should be subject to scrutiny by the CMC, especially where public funding is involved.
CMC hearings	The PCMC's support is sought for appropriate amendments to the CM Act to clarify that spousal privilege does not apply to CMC hearings.
Telecommunications interception	The CMC seeks the PCMC's continued support in recommending that telecommunications interception legislation be introduced in Queensland, and, if such legislation is passed, that funding be made available for the CMC to establish its own secure and effective interception facility.

