

Three-yearly review of the Crime and Misconduct Commission

**Supplementary submission by the CMC to
the PCMC: response to public submissions**

July 2006



Purpose of this supplementary submission

This supplementary submission has been prepared in response to the PCMC's public invitation of 10 July 2006 to provide further information. It contains the CMC's consideration of submissions made to the committee in writing or during hearings held on 6 and 7 July 2006. The submission addresses issues raised by various contributors, but does not attempt to respond individually to every contribution.

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Abbreviations

CCYPCG	Commission for Children and Young People and Child Guardian
CEO	chief executive officer
CJC	Criminal Justice Commission
CM Act	<i>Crime and Misconduct Act 2001</i>
CMC	Crime and Misconduct Commission
ESC	Ethical Standards Command (Queensland Police Service)
FOI	freedom of information
FOI Act	<i>Freedom of Information Act 1992</i>
HQCC	Health Quality and Complaints Commission
MAR	matters assessed report (Queensland Health)
QPS	Queensland Police Service
QYHC	Queensland Youth Housing Coalition
PCMC	Parliamentary Crime and Misconduct Committee
PCJC	Parliamentary Criminal Justice Committee
TI	telecommunications interception
YAC	Youth Advocacy Centre
YANQ	Youth Affairs Network of Queensland
VSM	volatile substance misuse

Chapter 1: Combating major crime

TELECOMMUNICATIONS INTERCEPTION

The submission of Mr Stephen Coates, barrister-at-law, raised some legal points of a technical nature about the issue of telecommunications interception (TI) powers; our response to his submission is therefore mainly in a similar vein.

Mr Coates's submission particularised a number of the commonly raised concerns about TI powers, and asserted that some policing agencies believe TI powers to be a 'magic potion'. This view is not shared by either the Commission or the Queensland Police Service (QPS).

Mr Coates claims that TI powers can be used for widespread 'gathering of criminal intelligence'. However, this does not take into account the limitations that the legislation places on the use of TI powers by law enforcement agencies.

To deal briefly with what Mr Coates's submission describes as the 'major legal weakness' of TI powers, it is the Commission's view that the dangers of mistaken identification are significantly overstated. The references to *Alexander v. The Queen* (1981) 145CLR395 and Beck's case (for which no citation is provided) are to cases involving visual identification. It might have been more helpful to refer to cases such as *R v. Smith* [1984] 1NSWLR462 and *R v. Corke* (1989) 41ACrimR292, which relate to situations in which voice identification was associated with visual identification and instances of voice recognition; and to *R v. Robb* (1991) 93CrAppR161, which relates to the admissibility in evidence of expert opinion evidence given by a phonetician highly qualified in the field of voice production.

The issue of voice identification is ultimately one for a jury, but there are various avenues open to law enforcement agencies for gathering convincing evidence of the identity of people whose voices are recorded in intercepted conversations. Circumstantial evidence, for example, is likely to be more compelling when obtained from intercepted telecommunications than from conversations detected by currently available covert surveillance devices. Additionally, it is likely that law enforcement methods will continue to involve visual surveillance of suspects and the use of coercive hearings and other means to obtain direct voice recognition evidence from close associates of targets.

The submission claims that 'the potential for misuse of recorded conversations' is the 'major social and political weakness of telephone tapping'. The commentary on the impact of TI powers on legal professional privilege tends to ignore the relevant legislative provisions, practice in relation to TI warrants, and the common law, and the Commission does not consider it necessary to deal individually with the issues raised.

The Commission agrees that 'the best protections possible must be instituted and maintained to guard against misuse and privacy [*sic*]'. Indeed, the Commission has always taken the view that, provided arrangements satisfactory to the Commonwealth could be agreed, it has no objection to a state-based accountability scheme in conjunction with that imposed by the legislation and in operation in all other Australian jurisdictions.

The Australian Parents for Drug-Free Youth submission also deals with the issue of TI powers. In general, the submission is consistent with the Commission's position,

although it perhaps anticipates a wider intelligence-gathering element of TI powers than the Commission advocates. In addition, the submission's final paragraph may not sufficiently recognise the effect of previous PCMC recommendations in relation to TI powers.

Chapter 2: Reducing misconduct and improving public sector integrity

This response to the public submissions is divided into two parts. Part A relates to issues that have either been raised in more than one submission or are of general application. Part B responds to the remaining issues that require a response. There is some minor overlap.

PART A: GENERAL SUBMISSIONS

Frivolous and vexatious complaints

A number of the submissions suggest that the CMC should be more active in prosecuting frivolous or vexatious complainants.

There is no doubt that false, frivolous or vexatious complaints can cause damage to the reputation of an agency, an elected official or an employee of an agency, particularly when those complaints are aired in the local newspaper.

Our brochures on how to make a complaint against police officers and public officials warn people against making false complaints. Our website also gives this warning.

It must be pointed out, however, that even if a complaint proves to have no substance, this does not necessarily mean that it is false, frivolous or vexatious. Often complaints are made because a complainant has a genuine, if uninformed or mistaken, concern about actions taken by the agency or the conduct of an elected official or employee.

The Commission acknowledges that it is a challenge to find the right balance. People must be protected against frivolous, vexatious and false complaints (and their unwarranted consequences); but members of the community must not be discouraged from coming forward with their honest (if sometimes mistaken) concerns.

For a complaint to be false, frivolous or vexatious, the complainant has to be aware that they are making such a complaint. The *Crime and Misconduct Act 2001* (CM Act) provides that it is an offence to knowingly make a false or misleading statement to the CMC, and it (and its predecessor, the CJC) has prosecuted a number of people for making false complaints and misleading statements.

The difficulty arises in establishing to the criminal standard, beyond reasonable doubt, that the person making the complaint or the statement made it knowing it was false or misleading. Regularly complainants talk of having a suspicion or belief, rather than attesting to actions they have witnessed. They often conclude, from facts known to them or from things they were told, that the conduct in question is corrupt, when their suspicions would have been allayed if they had been presented with additional facts. In these circumstances it is usually not possible to establish that they knew the allegations were false.

Nevertheless, people who knowingly tell the CMC things that are untrue waste valuable resources, damage innocent reputations and cause a good deal of unnecessary suffering. Where there is evidence, we will prosecute such people. In

every matter investigated by the CMC, officers involved in the investigation have an obligation to consider the question of whether there is evidence to support the prosecution of a person for making a false complaint. Indeed, the investigation file cannot be closed without an entry in the CMC computer database indicating that the question has been considered.

We will continue to be vigilant in our investigation and prosecution of those making false, frivolous or vexatious complaints.

Confidentiality of complaints

Some submissions, including that from the Local Government Association of Queensland (LGAQ), suggest the CM Act should be amended to include a requirement that a complainant be required to keep the existence and nature of their complaint confidential until the complaint is dealt with.

This issue was raised as far back as 1992, when the CJC sought such an amendment [see Attachment A: Report 18, August 1992, Part C: 'A report pursuant to section 4.8(1)(f) of the *Criminal Justice Act 1989*']. The CMC has not been able to establish whether it was supported by the Parliamentary Criminal Justice Committee (PCJC), but certainly the government of the day did not enact the amendment.

It is not difficult to understand why there would be reluctance on the part of any government to introduce such legislation, as it would leave itself open to the criticism that both the government and the CMC would be less open and accountable. There would also be significant difficulties in enforcing any such legislation if the media were to publish details asserting them to be from 'anonymous sources'. Further problems would arise in maintaining confidentiality in the course of an investigation.

The Commission's view is that it would be difficult to justify such an amendment where there is a public expectation that the work of the Commission in politically controversial or sensitive matters be open and transparent. It is important that public debate is not stifled by any legislative proscription. Consequently, the Commission does not support such an amendment.

However, we will continue to publish on our website, before the next local government and state elections, a message to all candidates seeking their cooperation to ensure that the CMC's complaint processes are not misused for political purposes. The Chairperson will also make media statements at the appropriate times to reinforce this message.

Section 40 directions

A number of the submissions acknowledge the value of section 40 directions in expediting and making more efficient the handling of complaints. As of 1 July 2007, it is expected that all departments will have adopted section 40 directions issued by the Commission.

The evidence is clear that those agencies who have had section 40 directions for some time have benefited greatly in terms of timeliness. The agencies are able to deal with less serious matters immediately and report to the Commission by monthly schedule.

The next phase of the roll-out of section 40 directions will begin shortly. Discussions have already taken place with Mr Greg Hallam PSM, Executive Director of the Local Government Association of Queensland, to seek input about the appropriate directions for the local government sector. With the introduction of the section 40 guidelines in that sector, efficiencies will result in dealing with less serious matters, which are routinely returned to the council to deal with.

The QPS submission expressed some concern about the length of time taken to assess matters. It asserts that, on average, 'some matters' take six to ten days; however, it is unclear to which matters this refers. Our assessment figures for the QPS are that 84 per cent of matters are assessed within five working days. Even when section 40 directions are introduced as part of Project Verity, the QPS will be able commence to deal with most matters immediately and report on these matters by monthly schedule. This is part of the Commission's commitment to make the handling of complaints by agencies and the CMC as efficient and effective as possible.

Review of the Whistleblowers Protection Act

Since December 2004, the CMC has been represented on a reference committee formed to consider certain aspects of the *Whistleblowers Protection Act 1994*. The committee also included officers from the CMC, the Office of Public Sector Merit and Equity, the Office of the Ombudsman, and the Department of the Premier and Cabinet. The group was formed to implement the government's response to recommendation 43 of Report No. 64, *Three Year Review of the Crime and Misconduct Commission* by the Parliamentary Crime and Misconduct Committee, which stated:

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

The government's response to the recommendation stated that it would conduct a whole-of-government review of the experience of public sector agencies in relation to the operation of the Act, and make any necessary amendments in light of the review.

A draft report was prepared in 2005, but finalisation of the report was delayed because it was considered likely that relevant whistleblower issues might be canvassed during the Bundaberg Hospital Commission of Inquiry and the Queensland Health Systems Review. The working group was re-formed in March 2006 and it prepared a report that took into account issues raised in the two external inquiries in relation to whistleblowing. It is expected that the report will be provided to Cabinet for consideration shortly.

The CMC is also a partner in an Australia-wide research project on best practice in dealing with whistleblower complaints, 'Whistling While They Work'.

Effect on disciplinary action of the resignation of an officer

The submission of the Director-General of the Department of Industrial Relations stated that the Commission's jurisdiction to prosecute a public servant is restricted to circumstances where the alleged offender remains employed within the public service. The submission suggested that the jurisdiction of the CMC be extended to

enable it to complete an investigation and make the appropriate recommendations in cases where the alleged offender has left public service employment.

There is no prohibition on the CMC investigating the conduct of a public servant after the person has left the employ of the public service. If the conduct in question is a criminal offence the CMC may, and often does, investigate the conduct and recommend criminal charges.

However, if the conduct falls short of a criminal offence but may amount to official misconduct, the CMC is denied the opportunity of charging the former public servant before the Misconduct Tribunal. The Misconduct Tribunal only has jurisdiction to deal with those who hold an appointment in a unit of public administration at the time the tribunal considers the matter.

The question of extending the jurisdiction of the Misconduct Tribunal was fully canvassed in Report No. 55, March 2001, pages 49–64 of the Parliamentary Criminal Justice Committee's review of the Criminal Justice Commission (Attachment B). Recommendation 11 from that report is:

The Committee, subject to the continued existence of the office of Parliamentary Criminal Justice Commissioner, recommends that:

- There be legislative amendment that would enable units of public administration, in their discretion, to regard an officer who has been charged with breach of discipline, or who had been informed that such a charge was about to be laid, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.
- The jurisdiction of the Misconduct Tribunals be changed, so that:
 - a. A Misconduct Tribunal has jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration;
 - b. If such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level; and
 - c. There would be no power for a Misconduct Tribunal to impose a monetary penalty in such circumstances.
- Section 32 of the *Criminal Justice Act 1989* be amended to put it beyond doubt that the CJC can continue an investigation, notwithstanding the retirement or resignation of a subject officer.

This recommendation by the PCJC supported the extension of the jurisdiction of the Misconduct Tribunals along the lines proposed by the CJC.

The CJC's position, as put forward by its Chairperson (p. 55) was as follows:

We are very much of the view that it would not be appropriate in the majority of cases to pursue investigations or disciplinary action beyond resignation or retirement. Ordinarily, matters that are subject to disciplinary action are of a nature that, if the person removes themselves from the employment, the concern in terms of their public employment is removed. It would really be a waste of resources to pursue it any further, particularly in the circumstance that the most significant penalty that could be imposed is the person's dismissal. If they are gone, they cannot be dismissed.

The recommendation was not adopted by the government of the day.

The CMC's position differs from that of the CJC. On balance, we are of the view that the status quo should remain. There are two interrelated reasons for this.

Firstly, if the conduct is criminal, the former subject officer can still be investigated and charged with criminal offences. Any amendment would therefore apply to only a very limited range of cases where the conduct is serious, but not serious enough to constitute a criminal offence. Furthermore, the Commission's view (as expressed at the last three-yearly review by Mr Brendan Butler SC, the previous Chairperson of the CMC) is that the power to charge a person with official misconduct after their resignation would not be appropriate in the majority of cases. Mr Butler cited examples in which it would be appropriate to pursue former officers in relation to the safety of children.

Secondly, the Commission is reluctant to support an amendment where it is generally acknowledged that the discretion to prosecute for official misconduct would only rarely be exercised. This might lead to the unfortunate consequence of our being accused of acting arbitrarily or perversely in particular cases.

This second reason alone might not be sufficient justification for the Commission to seek to retain the status quo, but it should be viewed in conjunction with the first.

Historically, teachers and others working with children who resign to avoid retribution were identified as the major target group for the application of any amendment to extend the jurisdiction of the Misconduct Tribunal post-resignation. In this context, Mr Butler cited the CMC's difficulties in communicating information that it might have about complaints of sexual impropriety involving children — impropriety that, although not amounting to a criminal offence, would still have a bearing on the appropriateness of an officer to be in a position of trust with a child. Mr Butler's principal concern was about the inability to pass on some of the information in the CMC's possession to the relevant bodies, for fear of breaching confidentiality legislation.

Although the situation remains the same, we have taken steps to address this problem. The CMC has recently written to the Minister for Justice and Attorney-General requesting that amendments be made to the *Criminal Law (Sexual Offences) Act 1978*, to allow us to pass on such information to agencies with a legitimate entitlement to it. For example, information might be provided to Education Queensland to be placed on the file of a person who has resigned, and, if that person seeks re-employment, or a referee seeks advice from Education Queensland, the information could be provided for consideration. Of course, the former officer must first be given the opportunity to respond to any adverse information provided.

Should these amendments be made, the Commission considers that the main rationale for extending the jurisdiction of the Misconduct Tribunal would be removed.

Threshold for notifying official misconduct

Some submissions suggested that the threshold for reporting official misconduct is too low. Currently, agencies are required to report on the basis of a mere suspicion. This is the view the CMC and the Crown Solicitor have taken on the reporting provisions in the CM Act.

There is of course good reason for having a low threshold. It is about maintaining public confidence in an agency through transparency and accountability. It is important that the independent body that oversees the agency (i.e. the CMC) is made

aware of all possible official misconduct, including that of a comparatively minor nature, because experience shows that it is in a culture where management is not dealing appropriately with minor concerns that more serious misconduct can emerge. Having a low reporting threshold is also insurance against the claim of a cover-up — a charge that cannot be laid if the matter has been referred to the Commission for its consideration.

The obligation to report, although great, is balanced against the devolution principle, which requires that action to deal with official misconduct should generally happen within the agency. In other words, managers should take responsibility for dealing with complaints. Clearly, section 40 directions will play a greater part in this regard as they take effect through the public sector.

CMC staff regularly address groups of officers from public sector agencies about their obligation to report, for example at liaison officer meetings, during regional visits and on specific request. Of course, all Complaints Services staff are available to give assistance in a particular case.

Communication in the course of investigations

A small number of submissions referred to the desirability of good communication in the course of CMC investigations. There is some minor criticism in this regard.

In the previous three-year review, the PCMC recommended that the CMC continue to improve its communication strategies, particularly in communicating progress and outcomes to the relevant stakeholders. The PCMC acknowledged that the nature of our activities will often impose constraints on what we can properly divulge about an investigation. The PCMC also acknowledged that it was not always easy to achieve a balance between the desirability of open communication and the need to ensure the integrity of our investigations. The PCMC recognised that we are not able to control what other entities do with the information we provide.

The CMC, as part of its Facing the Facts online service for agencies, has a specific module with the title *Managing the impact of an investigation*. Much of the information applies whether the investigation is conducted by the CMC or the agency itself. It emphasises the importance of communicating to the greatest extent possible, but subject to ensuring the integrity of the investigation.

Similarly, Misconduct Investigation officers have been specifically instructed to give stakeholders as much information as possible on a regular basis in the course of an investigation, subject to the necessity to maintain the integrity of the investigation. This instruction is consistent with the statutory requirement to cooperate to the greatest extent practicable with agencies to prevent and deal with misconduct.

There will always be some difference of opinion as to what may be communicated to ensure the integrity of an investigation. However the Assistant Commissioner, Misconduct, continues to reinforce to investigation staff that good communication generates good cooperation.

Referring matters back to the agency, and monitoring

In 2005–06 approximately 3 per cent of all complaint matters assessed were referred for CMC investigation; and 23 per cent of complaint matters were considered to warrant no further action by any agency. The remaining 73 per cent were referred back to the QPS or another agency to deal with. Of these, 6.5 per cent are to be reviewed. This means that about 10–12 per cent of all complaints that we consider warrant some further action are either investigated or reviewed by the CMC.

The 3 per cent of complaints that we retain are principally the most serious, sensitive and complex allegations of misconduct, which need the full range of investigative techniques and powers at our disposal. The vast majority of the other matters referred back to the agency to deal with are not serious cases of official misconduct. They largely concern disciplinary, human resources, industrial relations and managerial issues that would have been seen as part of a manager's responsibility before the CJC/CMC existed. It follows that there is no need for a full investigation of most of these matters, and there will be other more appropriate ways to resolve the issues raised.

If a complaint concerns criminal activity, and the CMC is not investigating, more often than not the QPS will deal with the matter, after referral either by the CMC or directly by the relevant agency. Often we are notified of a matter by an agency after it has been referred to the police to deal with. Only in rare circumstances would we seek to take over a police investigation. Many matters that may technically be criminal offences are returned to agencies to deal with through disciplinary or managerial action.

Those agencies that do have a greater capacity to investigate are referred more serious matters. For example, the QPS clearly has the capacity to investigate complaints of a more serious nature because of their other investigative experiences. Similarly, agencies that have dedicated investigative units, such as Corrective Services, have the capacity to investigate more serious conduct.

Of course, when we refer a matter to the QPS or another agency, this does not mean that we wipe our hands of the matter. There is a full range of monitoring options, including:

- ▶ close monitoring
- ▶ full reviews before or after action is taken
- ▶ targeted audits based on emerging trends and issues, determined by analysis of complaints and other data
- ▶ random audits.

Agencies also have access to complaint services for specific advice and assistance in matters referred back to them.

If agencies reach the stage where they are at an impasse and cannot advance the investigation, they can ask us to participate in a cooperative investigation or take over the matter completely. On several occasions we have helped agencies in both of these ways. Wherever possible, we endeavour to work cooperatively with the agency to build its capacity to deal with misconduct.

In at least one submission there was a suggestion that at times the CMC investigates minor matters. We will continue to investigate less significant matters from time to

time, where we consider that the mere fact of the CMC investigating the particular type of complaint will have a deterrent effect. However, even in these less serious matters there would normally be circumstances such as the seniority of the officer that would make the case a suitable one for us to investigate.

Restoring the reputation of subject officers

A number of the submissions suggest that, in cases where the allegations cannot be substantiated, efforts should be made to restore the reputation of subject officers.

The Commission agrees that, where the evidence is such that it is satisfied that the subject officer could not have engaged in the conduct alleged, the officer should be 'exonerated'. However, in most cases we are unable to do so. Generally, all we can do is reach the conclusion that there is insufficient evidence to forward a brief to a disciplinary or investigative body. That is, there can be no definite finding that the conduct alleged could not have occurred. To 'exonerate' when this is not warranted has significant ramifications. Two examples will illustrate this point.

Insufficient documentation

There are many cases where the documentation available to the CMC is such that no firm conclusions can be drawn on the primary allegations; consequently, there is insufficient evidence to warrant consideration of prosecution proceedings or disciplinary action. The failure to properly document transactions regularly masks corrupt or criminal behaviour. Exonerating the subject officer in relation to the primary allegations in these circumstances would merely give tacit approval to poor record-keeping.

Uncorroborated evidence

Another example is a situation where the evidence against the subject officer comes from a complainant or witness whose evidence cannot be corroborated. In these circumstances we might conclude that prosecution or disciplinary proceedings are not warranted, but a finding of exoneration would imply that the complainant or witness was not to be believed, when this was not necessarily the case. This clearly would be unfair to the particular complainant or witness, and would discourage complainants from coming forward.

Both of the above outcomes are undesirable.

PART B: RESPONSE TO SPECIFIC SUBMISSIONS

Response to the submission by the Youth Advocacy Centre

The Youth Advocacy Centre (YAC), in its submission to the PCMC, alleges that the recommendations in three CMC reports released in the last three years are:

... highly detrimental to young people both in terms of their interaction with police and the quality of services that young people receive from government. The CMC clearly does not appreciate the issues that affect young people and have [*sic*] ignored any input from the community about young people. Consequently the confidence that YAC has in the CMC has significantly diminished in the intervening 3 years.

(The reports referred to are *Protecting children: an inquiry into abuse of children in foster care*; *Police powers and volatile substance misuse: a review* and *Responding to volatile substance misuse: evaluation of the places of safety model*.)

The YAC does not elaborate on how the recommendations have been detrimental, so it is difficult to respond to these concerns. The allegation that we have ignored input from the community about young people is certainly incorrect. We can provide comprehensive information about our consultation processes for each of the three reports. We can also supply information about other projects and activities that have taken place or are currently under way, relating to police and young people (see below).

It is important to remember that not all stakeholders in the work we do, nor those with whom we consult with more broadly, will be happy with the conclusions we draw. It is not surprising, therefore, that the views of some of those consulted for these projects did not accord with the way forward recommended by the CMC (and the YAC may be one of those). This does not mean that their views were ignored.

Consultation processes conducted for the three reports referred to by the YAC

FOSTER CARE INQUIRY (*PROTECTING CHILDREN*)

The Inquiry into Abuse of Children in Foster Care arose out of a series of articles published in the *Courier-Mail* in mid-2003. Less than six months after referral of these issues to the CMC, we published the report *Protecting children*, which contained a raft of recommendations for systemic change in the way the needs of children in care are handled. The inquiry was a major undertaking for the CMC, involving more than 40 staff; and it led to the removal of the management of child protection matters from the Department of Families and the creation of a new department — the Department of Child Safety — which focuses specifically on child protection. The recommendations arising from the inquiry aimed to achieve a department that is completely child-focused.

Throughout the course of the inquiry, staff from Research and Prevention consulted directly with a number of children and young people in care and their representatives. For example, researchers met with:

- ▶ children in care and adults who had formerly been in care at Bravehearts
- ▶ children and young people from CREATE in Brisbane
- ▶ children in care at the Cherbourg Children's Shelter and their staff
- ▶ children and young people at CREATE in Mackay and their staff
- ▶ students and staff at Southside Education Sunnybank.

The CMC also arranged to have two young people in care (Stephen and Natasha from Create) appear at the hearings to ensure that their concerns were raised in public, and in their own words.

On page 276 of the *Protecting children* report, the views of the children consulted during the inquiry are documented in great detail. These views were certainly taken into consideration when the recommendations were formulated.

We also spoke to carers, police, health representatives and a large number of non-government organisations who work directly with children in care, to ascertain their views and how the system could work better for the children concerned.

The inquiry also called for public submissions, by placing advertisements in numerous newspapers throughout the state, and the CMC subsequently held two weeks of public hearings. Appendix A of the report lists many of the individuals and agencies that provided written submissions to the inquiry (pp. 255–8) and

Appendix B lists those who appeared at the hearings (pp. 259–60). It is interesting to note that the YAC does not appear on either of those lists, but numerous other agencies representing children and young people do — unless, of course, it was one of those that asked for its name to be withheld.

We have now embarked on our review of the implementation of the recommendations made in the *Protecting children* report. Representatives from CREATE, the Commission for Children and Young People and Child Guardian (CCYPCG), and other agencies who work with children in care will again be consulted.

THE VSM PROJECT(S)

As part of our review of the new police powers regarding volatile substance misuse (VSM) and the evaluation of the community-based ‘places of safety’ program, CMC researchers consulted widely throughout the state with scores of youth advocacy groups and community services servicing the youth population. These included:

- ▶ Youth Advocacy Centre (YAC)
- ▶ Youth Affairs Network of Queensland (YANQ)
- ▶ Brisbane Youth Service
- ▶ Indigenous Youth Health
- ▶ Queensland Youth Housing Coalition (QYHC)
- ▶ Youth Emergency Services/ Crisis Accommodation.

In addition, CMC research officers sent information about the trials to another 186 agencies, with an invitation to provide feedback on these trials and/or the VSM-related needs of their clients. In response, we received 40 submissions on these agencies’ views of the trials.

The review and evaluation process included many opportunities for young people to contribute their views and ideas. Across the areas in which the ‘places of safety’ and ‘police powers’ trials were operating, interviews were undertaken with 32 young people (aged 10–17 years) who all admitted regularly engaging in VSM (19 at place of safety facilities and 13 at other youth services). A further 254 surveys were undertaken with young people attending a place of safety facility during the pilot period, and another 10 surveys were completed by young people attending a children’s court in the greater Brisbane region (these were undertaken by duty lawyers employed in these courts).

The data resulting from the consultations, correspondence, interviews and surveys with youth advocacy groups, community services servicing the youth population and young people were analysed. The data, together with the qualitative data collected from representatives of other stakeholder groups (Queensland Health, the Queensland Ambulance Service and the QPS), and quantitative data documenting police activities and place of safety use and activities, were used to develop recommendations. These were presented in the two public reports: *Police powers and VSM: a review — responding to volatile substance misuse* and *Responding to volatile substance misuse: evaluation of the places of safety model*.

As would be expected, stakeholders’ perceptions and experiences of the trial police powers and places of safety model varied considerably. Not only were there differences between interest and professional groups; there were also differences within each group. In order to acknowledge and account for the disparate views of all stakeholders, a thematic analysis method was used. This allowed the qualitative

data to be reduced to a manageable number of themes, concerns and issues without compromising or undermining the validity of any particular opinion or experience.

The Brisbane Youth Advocacy Centre (YAC) made a submission in December 2004, and the perceptions and experiences described in this submission were included in the qualitative data analysis process. Indeed, although not explicitly identified in either of the public reports, many of the points made in this submission are reflected in the recommendations that arose as a result of the evaluation and review processes.

As has been demonstrated, consultation to seek relevant views was extensive.

Other CMC projects and activities relating to police and young people

POLICE AND YOUNG PEOPLE PROJECT (FORMERLY PROJECT SURF)

Background

A survey of a random sample of Queensland residents conducted by the CMC in 2002 and published in 2003 (*Public perceptions of the Queensland Police Service: findings from the 2002 Public Attitudes Survey*) found that respondents aged 18–24 years old were significantly more likely than other age groups to report negative assessments of, and dissatisfaction with, police. These findings supported previous research which had highlighted the mutually negative perceptions that young people and police have of each other.

The impact of negative attitudes and negative interactions can result in greater risk to youth and police, lower confidence in the police, and a reluctance for young people to formally complain about police misconduct. Conversely, good relationships between youth and police can promote more effective interactions between both groups and create healthier, safer communities. Thus, a more complete understanding of the factors that shape the perceptions and interactions of young people and police is important. This knowledge can then be used to develop strategies and interventions that promote more constructive interactions, in order to minimise adverse consequences and improve outcomes for young people.

Project description

The University of Queensland is currently involved in a three-year (2005–08) study of interactions between young people and police. This project is supported by an Australian Research Council grant, and has the CMC as an industry partner. On a broader level, the project is associated with an *injury prevention* strategy, of which the CARRS-Q (Centre for Accident Research and Road Safety, Queensland) program at the Queensland University of Technology forms a part.

The University of Queensland project aims to examine the relationship between young people (15–24 years) and the police in Queensland. The study focusing on young people and police interaction has the following aims:

- ▶ To investigate the nature of, and factors shaping, interaction between police and young people, and in particular to understand:
 - from the perspective of youth, their concerns and reasons for dissatisfaction with police
 - from the perspective of police, their concerns and challenges in interacting with youth, and responding to youth crime and disorder.

- ▶ To determine how young people access the complaints process, and identify any barriers to youths making complaints about police behaviour.
- ▶ To explore alternative strategies for enhancing police–youth relations, and increasing the confidence of young people in the police, especially focusing on issues of accessibility and of resolution of complaints.

Anticipated broader outcomes

The findings of this project will increase understanding of the nature of, and factors shaping, interactions with police in Queensland from the perspective of both police and young people. This information will make it possible to formulate strategies to enhance police–youth relations and increase the accessibility and appropriateness of the complaints process for young people.

Current status of the project (CMC involvement)

- ▶ Arrangements have been made with CMC Complaints Services to automatically record and extract complaints involving young people (as complainants or victims) in a ‘Police and Young People’ interest group within COMPASS.
- ▶ Research staff have contributed to the development of a survey administered by The University of Queensland to young people (this has been piloted with 274 young people).
- ▶ Research staff have contributed to the design and implementation of police–youth intervention.
- ▶ Research staff have been providing assistance by the way of administration and advice to police on the design and implementation of a questionnaire (evaluating the police–youth intervention).
- ▶ An advisory committee has been established (invitations were sent to Legal Aid, Aboriginal and Torres Strait Islander Legal Services and the YAC to nominate representatives for the group). The first advisory committee meeting was held on 8 June 2006, and minutes were taken by the CMC. Meetings are to occur every 3–4 months for the duration of the project. The YAC was also invited to nominate a representative for the first advisory committee meeting of the Police and Young People project in early July, and was involved in earlier consultations in February 2006. The YAC was represented at both meetings.

PUBLIC PERCEPTIONS OF THE QPS 2005 (REPORT RELEASED JULY 2006)

The survey that provided the impetus for the development of Project Surf (see above) was one of a series of Public Attitudes Surveys conducted by the CMC since 1991. The survey was repeated in 2005, with 1500 respondents; the report presenting the 2005 data was released in early July 2006.

With regard to the relationship between police and young people more specifically, the report states:

Younger respondents (aged 18–24 years) were significantly more likely than older respondents to express negative views about the police. They were also more likely to report dissatisfaction about an encounter with the police. There may be a number of explanations for this finding, including some research evidence that young people are more likely to commit offences and therefore more likely to come into contact with the police. Such interactions, therefore, are more likely to lead to dissatisfaction with police than interactions between police and older people, because the latter

quite often include more positive interactions within the community, such as Neighbourhood Watch.

Nevertheless, there has been a significant decline since previous surveys in the proportion of young respondents reporting dissatisfaction with police in the preceding 12 months ($p < .001$). In 2002, 26 per cent of respondents aged 18–24 years reported dissatisfaction in the preceding 12 months, and this figure fell to 18 per cent in 2002. This is a good result and may reflect improved police practices in dealing with young people since the last survey.

...

The areas for improvement identified in this report are similar to those identified in the 1999 and 2002 surveys. However, there is some evidence of improvement since the last survey, and the QPS is to be congratulated on its achievements and encouraged to implement further change to continue these pleasing outcomes. For example, there is some evidence of decline in the levels of dissatisfaction with the police overall. The relationship between police and young people also seems to have improved, and is likely to continue to do so with the implementation of a research project by The University of Queensland (supported by an Australian Research Council grant with the CMC as an industry partner). That project will investigate the nature of, and factors shaping, interaction between police and young people; it will also include information about complaints processes and possible strategies for enhancing police–youth relations and increasing the confidence of young people in the police.

The CMC will conduct the survey again in several years time and any changes in the relationship between police and young people will be identified. It is also the CMC's intention to make a number of modifications to the survey instrument before it is conducted again. In the light of Project Surf, and possibly the concerns raised by the YAC, it may be possible to include more in-depth questions about the relations between police and young people.

LISTENING-IN: RESULTS FROM A CMC AUDIT OF POLICE INTERVIEW TAPES

A report released by the CMC in 2004 (*Listening in: results from a CMC audit of police interview tapes*) presented the findings of a second audit of police interview audiotapes conducted by the CMC. The audit provided an opportunity to compare police compliance with the legislative obligations defined in the *Police Powers and Responsibilities Act 2000* with compliance recorded in the first audit, carried out in 1998. It involving an assessment of the interactions between police and people suspected of having committed indictable offences.

Among the random sample of tapes that were audited, 10 juveniles had been interviewed by police. The review indicated that a support person had been present during all of those interviews. This was also the case for the 14 juveniles interviewed in the 1998 audit. In 60 per cent of cases relating to juveniles the support person was a parent or guardian; in the other cases the support person was a relative or friend, or a justice of the peace. The same types of support people were present in the 1998 audit, with a parent or guardian being the most favoured.

The overall results of the audit indicated some improvement in police compliance. However, there was little or no evidence of improvement in compliance with some important obligations, and the research highlighted a number of problems requiring attention through training and supervision.

CONTINUING DISCUSSIONS WITH THE QPS

Complaints Services staff continue to encourage the Ethical Standards Command (ESC) of the QPS to resolve complaints from young people through mediation, and whenever possible divert from charging. Indigenous youth is often the specific focus of discussion with the ESC.

CONTINUING DISCUSSIONS WITH YOUTH GROUPS

Complaints Services staff take the opportunity, whenever possible, to speak to youth groups about the complaints process. It is made clear that young people (like anyone else) can make a complaint by telephone or in a face-to-face interview.

THE WEBSITE

There is a section on the CMC website called 'Resources for young people', which, as the title promises, covers issues of particular relevance to young people. When time permits, we would like to review the quality of these resources, to make them more relevant to a range of young people, from pre-teens to young adult.

In summary

We have conducted a number of projects and inquiries into issues that affect young people. In so doing, we have actively consulted with young people and their representatives and actively sought information about the treatment of young people by police and other government departments (e.g. the Department of Families and the Department of Child Safety).

It is the Commission's view that recommendations arising from this work have not been detrimental to young people — indeed, quite the opposite. The CMC makes every effort to understand and appreciate the issues that affect young people. The CMC certainly considers all input provided to it by young people and their community representatives; but inevitably we will not agree with all views presented, because they often vary significantly between, and even within, groups. Complaints Services has consulted stakeholders specifically in relation to youth issues, although it is acknowledged that more can be done when resources permit.

Response to the Queensland Health submission

Anonymous complaints

The Ethical Standards Unit of Queensland Health has observed an increase in the number of anonymous telephone complaints received by the CMC. Their submission suggests that the file notes of the communications with the anonymous complainants often contain limited information, and sometimes do not identify the main issues of concern for the complainant. This leads to difficulty in productively investigating the complaint.

Anonymous complainants often provide only limited or general information, to avoid identifying themselves. Furthermore, their purpose in complaining is often not to have their complaint investigated but to provide general information for the information of the relevant agency.

When we receive such anonymous complaints we refer them to the relevant agency — not necessarily for investigation, but for their information and for consideration in light of other information the agency might have in relation to the issues raised.

The Queensland Health submission contends that these complaints may be recorded by officers who do not have expertise and experience in health issues, and that the information, particularly in relation to clinical complaints, may consequently be misconstrued.

To some extent the information forwarded to Queensland Health merely reflects a lack of experience or expertise in the complainants. However, it is acknowledged that, wherever possible, CMC complaints officers need to acquire expertise in relation to specific agencies. The restructure of Complaints Services to enable streaming to occur will allow some specialisation in relation to particular agencies. One benefit of this will be to maximise the possibility of obtaining as much relevant information as possible from the complainant, whether or not the complainant remains anonymous.

The threshold test for reporting official misconduct

Queensland Health submits that the Ethical Standards Unit has observed an apparent decrease in the threshold required for an allegation to fall within the definition of suspected official misconduct under the CM Act. The threshold has not been decreased; the definition of official misconduct and the obligation to report official misconduct has not changed since the introduction of the *Criminal Justice Act 1989*.

Some agencies have had difficulty grasping the concept that the obligation to report arises when the complaint or information may at its highest involve official misconduct. In this category general human resources and workplace issues, bullying or harassment allegations may amount to official misconduct in certain circumstances and therefore should be reported. However, most could not amount to official misconduct and do not require reporting.

The question of reporting is, of course, entirely different from the question of which is the appropriate agency to deal with the matter. The CMC investigates around 110 matters every year, notwithstanding the receipt of about 4000 complaints. The vast majority of complaints are dealt with by the agencies themselves. Importantly, it is expected that most of the matters at the lower end of the threshold would be reported by monthly schedule as a result of a section 40 direction.

Matters assessed reports

The submission states that Queensland Health's Ethical Standards Unit has experienced some variation in endorsements contained within matters assessed reports (MARs). It contends that endorsement comments on similar matters often differ dramatically.

The first comment that should be made is that there will be cases that, although appearing similar, may warrant specific recommendations. Each case must be determined on its merits. In any event, with the streaming of Complaints Services and the consequently closer consultation with agencies, it is hoped there will be a reduction in those endorsements that raise concern.

Management of clinical complaints

Queensland Health submits that the CMC's assessment procedures have changed since the Bundaberg Hospital inquiry so that all clinical complaints, irrespective of the gravity of the complaint, are assessed as suspected official misconduct in the first instance.

It has always been, and still is, the Commission's view that most clinical complaints are not issues of possible official misconduct. CMC officers have regularly reiterated this with Queensland Health staff. For clinical conduct to be official misconduct the conduct must be either:

- ▶ a course of conduct involving repeated and/or wilful behaviour that undermines the trust placed in the person by virtue of their position, or
- ▶ a single incident of behaviour indicating a callous disregard for, or reckless indifference to, the exercise of skills or the performance of the duties or activities of the subject officer (i.e. conduct concerning gross professional negligence),

either of which could constitute a criminal offence or a disciplinary breach providing reasonable grounds for dismissal.

Health Quality and Complaints Commission

We are in the process of developing protocols with the Health Quality and Complaints Commission (HQCC), Queensland Health, the Ombudsman and other relevant agencies, with a view to ensuring that health complaints are reported to the appropriate agency and dealt with effectively and efficiently.

Response to the submission of Mr Gary Storch, Chief Executive Officer, Caloundra City Council

Mr Storch submits that, where the chief executive officer (CEO) reports to the CMC and waits for further directions, this is a case of 'red tape unnecessarily complicating the process'. Section 40 directions to local councils will largely solve this problem.

The submission then proposes that, if the complaint is too complicated or serious for the CEO to handle without reporting back to the CMC, it should not be referred to the CEO by the CMC in the first place.

In the Commission's view, Mr Storch's submission does not acknowledge the effect of the CM Act, which requires the devolution of responsibility wherever possible to an agency, subject to the CMC's monitoring role. Where the CMC assesses a matter as requiring some ongoing monitoring in the public interest, despite not being sufficiently serious for the CMC to investigate itself, we should, and do, ask the agency to supply a report or progress reports on the investigation before it is finalised.

Response to the submission of the Local Government Association of Queensland

Guidance for councillors and senior management

The Local Government Association of Queensland (LGAQ) submits that there is a need for further guidance for local government members and senior management on the CMC's role and responsibilities. It recognises that this objective may partly be achieved through the development of a local government-specific module for inclusion in the *Facing the facts* resource manual.

Since the submission was prepared, the local government module for the *Facing the facts* resource manual has been launched and published on the CMC website.

In addition, we will continue to conduct regional visits, in which invariably there is a local government focus to assist councillors and senior management.

Recent discussions with the Executive Director of the LGAQ have opened up an avenue for CMC officers to participate in the induction training provided by the LGAQ to new CEOs.

Knowledge and expertise in local government

The LGAQ submits that we should engage people with appropriate knowledge and experience of local government law and local government operations to assist us in carrying out our functions with respect to the local government sector.

The Commission agrees that this is highly desirable and has made attempts to recruit or second people with experience in local government, both in the prevention area and in the complaints services area. These efforts have been largely unsuccessful. However, recent discussions with the Executive Director of the LGAQ have opened up opportunities for secondments from the LGAQ to the CMC. This would no doubt be of considerable long-term benefit to both the LGAQ and the CMC.

Investigating councillors

The CMC acknowledges that some complaints involving a councillor are difficult for the council to investigate itself. However, the CMC does not have sufficient resources to devote to the less serious matters that are returned to councils. Where the allegations relate to corruption, the CMC will carry out the investigation; but most matters are not of this moment, and the CMC simply cannot divert resources from its other imperatives to deal with them.

We are now able to refer a matter to the CEO, recommending that it be referred under section 250U of the *Local Government Act 1993* to the local government's conduct review panel for review. In such matters we recommend that, wherever possible, an external investigator be assigned to the matter, and sometimes we advise the council to seek assistance from the LGAQ.

The LGAQ submission asserts that the referral of matters that are the primary responsibility of the CMC back to the CEO without funding assistance is an exercise in cost-shifting.

In the Commission's view, requiring agencies, including councils, to investigate matters is not a cost-shifting exercise but rather a recognition that the council must take responsibility for the conduct that falls within its domain. Public companies such as banks spend a considerable amount of money on responding to complaints within their organisations. It is difficult to see how the position of agencies or councils is any different, although it is acknowledged that the smaller the agency or council the more difficult it is to find the funds to commit to dealing with complaints referred back.

The LGAQ submits that the CMC needs to consider both the subject matter and the council context in relation to every complaint that might be referred to council CEOs for investigation. It then cites a specific example where the CMC referred a complaint involving the Whitsunday Shire to the CEO for investigation when one of the allegations was against the CEO himself.

The CMC does consider both the subject matter and council context with respect to every complaint that is referred to a council CEO for investigation or to deal with in

some other way. Unfortunately, in the Whitsunday Shire matter, the information originally provided to the CMC did not suggest that the CEO might have been the subject officer of one of the allegations. Had sufficient information been provided in the first instance, this situation would not have arisen. We would never knowingly refer a complaint to a CEO for investigation if the complaint had been made against him or her.

Timeliness of council investigations

The LGAQ submits that a common issue raised with the association by councillors is the time taken to investigate and finalise complaints — especially those of which the public is aware.

The CMC is most mindful of the effect of extended investigations on councils, subject officers, complainants and other stakeholders. However, most matters involving local government require financial inquiries to be conducted, and these by their very nature are time-consuming.

The specific example given by the LGAQ of the Woocoo Shire Council, as having been under investigation for at least 18 months and the investigation not yet complete, is a little misleading. A considerable period of time elapsed while the Director of Public Prosecutions was considering whether charges should be brought. More recently the matter has been before the courts and beyond the CMC's control.

Our recent policy of having our own police officers consider charging in less sensitive matters will ameliorate some of the timeliness issues encountered in cases such as this.

The submission states that the LGAQ is aware of a number of witnesses involved with the CMC investigation of Burnett Shire Council who requested transcripts or copies of their interviews with investigators. It continues that the CMC supplied these, but made serious errors in sending witness transcripts/tapes to the wrong witnesses, thus seriously undermining the confidentiality of the interview and demonstrating the risk of investigation undertaken without adequate resources.

The incident referred to resulted from an administrative error whereby, when transferring audiotape to the CD medium, to comply with the witnesses' requests, one part of an interview with one witness was unfortunately added to the CD of another witness's interview. As soon as the matter was brought to our attention we recalled all the CDs and checked them. We understand that no other problems were found. The matter was brought to the attention of the relevant officers to ensure this would not happen again.

Release of information to the media

The LGAQ submits that it is vital that the person who is the subject of the complaint and the complainant both receive the CMC report or decision about the complaint before any release or comment is made to the media.

The Commission agrees completely, and has for some time taken steps to ensure this occurs — although sometimes difficulties arise when dealing through lawyers. Most recently, the relevant media release signature forms, which must be signed off by the relevant investigator, have been amended. They require an endorsement that 'all necessary steps have been taken to notify all relevant parties (complaint/s, subject officer/s etc.) of the outcome prior to the media release being issued'.

It should be noted that the reference in Appendix C to the LGAQ submission erroneously refers to recommendations in the CMC's report into allegations against the Cloncurry Shire Council being publicly released. In fact, no public report was made. A brief media statement (see Attachment D) was issued, but this did not contain the great detail as quoted in the LGAQ's Appendix C. This detail was communicated in letters to the parties.

The use of coercive powers

The LGAQ maintains that investigators have on occasions been unnecessarily authoritarian in using coercive powers, and recommends that they should always approach an investigation with a view to negotiating the support and resources that might be required of the council rather than 'usurping or demanding them'. It considers that any CMC investigation is stressful and upsetting.

There will be times when the nature of the investigation requires the use of coercive powers. Unfortunately, the use of these powers is often stressful and upsetting, which is regrettable. However, we agree that, wherever possible, we should seek cooperation rather than use coercive powers.

CMC officers have been specifically instructed, in relation to council matters, to make more use of CEOs, councillors and other staff in obtaining information at an early stage of any investigation, and if possible to do so without exercising coercive powers.

Chapter 3: Accountability and corporate governance

UTILITY OF THE COMMISSION'S STRATEGIC PLAN

The PCMC expressed a view that the Commission's strategic plan 'does not on its surface appear to be of much utility to month-by-month activity'.

In a sense the committee's view is correct. The strategic plan does not set out our monthly activities. However, it is not intended to. At its simplest, a strategic plan sets the direction for an organisation. It is the link between our vision and our business plans — the means by which we ensure that our activities meet the organisational goals that have been set. Our strategic plan concentrates on the CMC's goals (or 'outputs'), which are:

- ▶ To combat and prevent major crime
- ▶ To reduce misconduct and promote high standards of integrity in the public sector.
- ▶ To provide an effective witness protection service.

These are the organisational goals against which we regularly report our performance to the PCMC, and to the Attorney-General and Minister for Justice. We have also added a further goal:

- ▶ To be an effective and productive organisation serving all Queenslanders.

These are long-term goals for the organisation, and guide our future.

Our strategic plan also sets out the strategies by which we seek to meet each goal, the organisational contributors to each goal, and the performance indicators we will use to measure our success.

Within the plan we set out our shorter-term priorities — the specific areas on which we will focus over the next 12 months. Between July 2006 and June 2007, for instance, we intend to focus on these priorities:

- ▶ Strengthening the law enforcement impact on organised crime and criminal paedophilia, including prevention initiatives
- ▶ Vigilant monitoring and support of integrity systems within the police service and public sector in Queensland
- ▶ Strengthening partnerships
- ▶ Recovering the proceeds of crime
- ▶ Enhancing information technology capabilities.

The strategic plan explains each of these priorities, identifies the challenges to be faced and describes how our success in meeting these priorities will be measured. It sets the context for our work — why we do things, but not necessarily how. Each area within the CMC develops the 'how' in its individual business plan — it is the business plans that set out the more specific activities by which we intend to achieve our strategic goals.

The strategic plan is best regarded as a 'high-level' document, supported by more detailed documents in the form of business plans.

Nevertheless, the Commission notes the views of the PCMC, and will take them into consideration when developing our next strategic plan.

OFFICE OF GENERAL COUNSEL

In the course of the previous three-yearly review (Report No. 64, March 2004), the PCMC considered the issue of the Office of General Counsel established within the CMC.

The Office of General Counsel had been created (in the then CJC) in December 1992. Its role was to provide independent legal advice to the organisation as a whole, and to its operational areas, on varied topics including administrative and criminal law, contracts, personal injuries litigation and statutory interpretation. At the time of the last three-yearly review and up 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.

The PCMC report on its three-yearly review of the CMC contained the following recommendations:

Recommendation 44

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

Recommendation 45

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

In accordance with those recommendations, the Commission undertook to review the functions of the Office of General Counsel. The review was undertaken by then Commissioner Ray Rinaudo. A preliminary report of the review was provided to the PCMC on 25 October 2004. Following consultation with General Counsel, a final report was submitted to the Commission 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.

Advice of this decision was sent to the PCMC on 30 November 2004, in a letter from the then Chairperson, Brendan Butler SC. The Commission's resolutions took effect on 1 January 2005.

The role of General Counsel now 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 operation of the CMC.

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.

In relation to the implementation of quality assurance systems (LAW9000) and the development of appropriate policies and procedures, the following activities have been completed or are in progress:

- ▶ completion of the Legal Advice and Precedents (LAPS) database
- ▶ preparation of legal precedents (i.e. precedents relevant to the types of applications and matters that frequently see Legal Services Unit officers appear before various courts and tribunals)
- ▶ preparation of FOI precedents (particularly standard responses, information, etc.)
- ▶ development of a workflow management database that will permit monitoring of all work tasked to the Legal Services Unit, and provide information about response times for advice, thus permitting a more efficient and effective service to be provided; and
- ▶ finalisation of policies (which are regularly reviewed) in relation to the general activities of the Legal Services Unit, conducting litigation for the CMC, engaging external counsel and solicitors, FOI and Privacy.

The Official Solicitor has recently attended a two-day workshop conducted by the College of Law in New South Wales (29 and 30 June 2006), which has provided invaluable information regarding monitoring and auditing processes necessary for LAW9000 compliance.

Both General Counsel and the Official Solicitor are participants in the Leadership and Management Development Program being conducted within the CMC. The Official Solicitor will also be attending the Public Sector In-house Counsel Conference to be held in Canberra later this year.

The Commission is satisfied that the measures outlined above have contributed to the continued effective operation of the Commission's legal services.