PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Members present:

Mr G.J. Wilson MP (Chairperson)
Mr M.W. Choi MP
Mr S.W. Copeland MP
Mrs E.A. Cunningham MP
Mr J.M. English MP
Mr H.W.T. Hobbs MP

Staff present:

Mr S. Finnimore (Research Director)
Ms A. de Jersey (Principal Research Officer)

THREE-YEARLY REVIEW OF THE CRIME AND MISCONDUCT COMMISSION

TRANSCRIPT OF PROCEEDINGS

Thursday, 6 July 2006

Brisbane

WITNESSES

THURSDAY, 6 JULY 2006

Committee met at 9.18 am

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

The preparation for and conduct of this three-year review follows a pattern established over a number of years. The hearings on this occasion follow a number of actions taken by the committee. On 30 November 2005 the committee wrote to a number of organisations and individuals advising of the likely commencement of the three-year review in early 2006. On 9 March 2006 the committee advertised in the *Courier-Mail* calling for public submissions to the review. The closing date for submissions was 12 May 2006. The committee wrote to the Crime and Misconduct Commission, all ministers, directors-general, members of parliament and some 90 other agencies, organisations and individuals advising of the committee's call for submissions and inviting submissions to assist it in conducting its three-year review of the CMC. A number of agencies, including the CMC, sought an extension of time in which to provide a submission. On 15 June 2006 the committee tabled in the Legislative Assembly the submissions considered appropriate for tabling. Most of the submissions received were tabled. Some submissions and parts of submissions were not tabled for reasons of confidentiality and relevance. The committee will carefully consider every submission received whether tabled or not.

The committee acknowledges the assistance provided by the CMC and the other stakeholders including members of the public who have provided written submissions to the committee to assist in its review. The committee would like to particularly acknowledge the assistance of the CMC Chairperson, Mr Needham, the other commissioners of the CMC and the senior officers of the CMC. The committee did not limit the scope of the CMC submission, leaving open all aspects of the operations of the CMC and of the Crime and Misconduct Act. The CMC responded by providing the committee with a comprehensive submission on 16 May 2006.

Having regard to the submissions received, the committee is determined to take evidence at public hearings from representatives of community organisations, government agencies and officers of the CMC. The purpose of these hearings is to hear the various viewpoints on relevant issues and to allow the committee to ask questions of representatives from a cross-section of interested organisations. The committee will consider whether to hold further public hearings as part of this review.

Regarding the program, the proceedings over the next two days will take the following form. Each invitee will have an opportunity to elaborate on their written submission. There will be an opportunity for those representatives to answer questions put by members of the committee. The public hearings will commence with representatives of the CMC. Firstly, the committee will hear from the CMC Chairperson, Mr Robert Needham. The committee will then hear from senior officers of the CMC as follows: Mr John Callanan, Assistant Commissioner, Crime; Mr Stephen Lambrides, Assistant Commissioner, Misconduct; Mr Chris Keen, Director, Intelligence; Chief Inspector Felix Grayson, Acting Director, Witness Protection and Operations Support; and Ms Susan Johnson, Director, Research and Prevention.

The committee will also hear from His Honour Bill Pincus QC; Commissioner of the Queensland Police Service, Bob Atkinson; Assistant Commissioner Ian Stewart, Ethical Standards Command, Queensland Police Service; Councillor Paul Bell, President, and Mr Greg Hallam, Executive Director, Local Government Association of Queensland; Mr David Bevan, the Queensland Ombudsman. The committee will also hear from Mr Stephen Coates, barrister, subject to his availability. The hearings will conclude tomorrow with final submissions from the CMC Chairperson, Mr Needham, who will have an opportunity to respond to any submission made by other speakers and to canvass any additional issue that has not been covered. Finally, if any agency or interested member of the public wishes to forward a written submission or supplementary submission to the committee they are most welcome to do so.

The other members of the committee who are in attendance today are Mr Howard Hobbs, Deputy Chair; Mr Michael Choi; Mr Stuart Copeland; Mrs Liz Cunningham; and Mr John English. I note that on 2 June 2006 the office of the member for Noosa, Ms Cate Molloy MP, advised of her apology for these hearings which was accepted by the committee at its meeting on 7 June 2006.

I now call on Mr Needham, accompanied by any part-time commissioners available today—Dr David Gow is intending to be here at some time—to speak to the committee.

NEEDHAM, Mr Robert, Chairperson, Crime and Misconduct Commission

CALLANAN, Mr John, Assistant Commissioner, Crime

LAMBRIDES, Mr Stephen, Assistant Commissioner, Misconduct

HUMMERSTON, Mr Mark, Executive Director, Crime and Misconduct Commission

Mr Needham: Good morning, Mr Chairman, gentlemen and Mrs Cunningham. Dr Gow expects to be here at some stage today, but I am not sure what time he is going to be able to attend. Ms Cork is unable to be here today but she will be attending tomorrow. I am not quite sure whether Mr Drummond is available at this stage.

As previous chairs before me have done, I welcome this three-year review process. It is an important part of the accountability regime for the CMC, and this committee would be well aware of my own personal view with respect to accountability—that every organisation should be subject to an appropriate accountability process. I also acknowledge the significant contributions that previous committees have made through their three-year review reports to the evolution of the CJC and the CMC through to the organisation that it is now. I mention in particular the contribution made by those committees to the development of the concept of devolution, which received statutory recognition in the Crime and Misconduct Act 2001. This review will continue this process of assistance and guidance to the CMC.

It is, of course, three years since the last review. I have only been the chair of the commission for half of that time. A moment's reflection will show that a lot has happened in those three years. For example, the CMC's child safety inquiry and the following report occurred within this three-year review. I do not know about you but to me looking back it seems a long time since that inquiry occurred. More notable events of the three years are referred to in our written submission, and I will not go through all of those.

One matter I will specifically mention though is the assistance that the CMC gave to the Bundaberg Hospital Commission of Inquiry and the allied Queensland Health Systems Review, conducted by Mr Forster, as that assistance has never been made publicly known. Although the terms of reference of the inquiry were far wider than the jurisdiction of the CMC, they did include some aspects dealing with official misconduct which cut across the jurisdiction of our organisation. To avoid any duplication of effort, we liaised with Mr Morris and with counsel assisting him. We interviewed in excess of 80 witnesses, examined many files and much documentary material. The interviews, the analysis of those interviews, the analysis of all of that documentary material were passed on to counsel assisting Mr Morris and later to those assisting Mr Davies and they formed the bases for large sections of the evidence that was led at those inquiries. This was the reason why the commission was then later able to decide that the CMC did not need to hold any hearings of its own, the matters being fully and adequately dealt with by the report of the inquiry. With respect to Mr Forster, we liaised with him and gave him input into his suggested complaints system for Queensland Health. His review also, of course, covered many areas across the health system which had no relevance vis-a-vis the functions of the CMC.

One matter of significance is that the CMC has now been in existence as the combined organisation of crime and misconduct for 4½ years. It was a large logistical task amalgamating the two organisations, but I consider that it has been successfully accomplished and benefits have been derived from that joinder. These benefits are pointed out at pages 1 and 2 of our written submission. We also point out there why we conclude that some of the expressed concerns at the time of the joinder have not, in fact, materialised.

To the benefits pointed out there, if I can add a couple of perhaps more tangible benefits, not perhaps as substantial as those that are pointed out in the submission but still, in my view, relevant. These derive from our crime area. One of them is that they now have as the most senior police officer in the organisation—and someone who can speak on their behalf back within the Queensland Police Service—an assistant commissioner. You would all understand of course that the Queensland Police Service is a hierarchical organisation. The assistant commissioner speaking on behalf of all of the CMC and, in particular, then on behalf of crime, back in the QPS, carries the influence of that position.

Secondly, there is now a more rigorous accountability structure that our crime area is subject to, as is, of course, the rest of the CMC. As the QCC, the accountability structure consisted of the Crime Reference Committee. That organisation still exists, but added to that in the accountability structure now for the crime area is the additional accountability provided by the commission itself and, of course, this committee. I consider both of those to be considerable benefits.

Allied to the crime area is the proceeds of crime function of the commission. As you would be aware, the CMC is responsible for the civil confiscation aspect of that legislation. The relevant portions of that act commenced in January 2003 and the CMC's Proceeds of Crime Unit commenced in July 2003. Its operation has been entirely during the period that is now covered by this review. An enormous amount, I would suggest, has been achieved during that time. Mr Callanan will speak further to this, I am sure.

While I do not want to steal his thunder, I would mention that in the last financial year just a fraction under $2 million was actually confiscated by a court decision and by negotiated settlements. A review of the operation of the Criminal Proceeds Confiscation Act is to be carried out by the minister this year. I understand that that process has commenced and that consultations with interested parties, including the CMC, of course, will commence later this month. We look forward to that review.

The Proceeds of Crime Unit in the CMC was funded initially from savings achieved by the amalgamation of the CJC and the QCC. Over the three years that it has now been operating, the requirements of the area have grown as the workload has increased. The staffing establishment has increased from approximately five through to just under 11 at the moment. We are still carrying that from our budget without any further supplementation of our budget. That has been able to be achieved up to now. It will become necessary for us, at the appropriate time, to seek additional funding to maintain this level of resource commitment to this function. Perhaps it can be said that it will be offset by the amount of money that has been gained into the public coffers by the work of that unit.

I move briefly to misconduct. Misconduct is the work of the CMC that garners the most public attention. Sometimes one could be forgiven for thinking that that is all we do, especially if one takes into account the unthinking comments that often appear in the media that attribute our full budget as if it were solely utilised or to be expended on the misconduct area of the commission.

The committee is well aware of the broadened focus of the CMC in the misconduct area, partly brought about by changes implemented in the Crime and Misconduct Act. Those changes themselves are the product of experience gained over many years of operation of the CJC and the acceptance, not just in Queensland but throughout Australia, that integrity cannot be imposed on the public sector purely by a hard adversarial process of prosecutions and investigations. This broadened focus includes the acceptance that we need to provide the leadership and framework to enable public sector organisations to improve themselves and to adopt integrity as part of their core business.

I was heartened to see the many comments made to the committee in submissions supporting the work of the CMC in the past couple of years in the areas of misconduct, prevention and capacity. These are areas that the commission recognised as being of the utmost importance and areas where we need to continue our efforts in the future. We accept that it is only by making managers at all levels in the public sector take responsibility for any deviations from the proper standards of integrity in their own organisations that we will instill integrity as core business in those organisations.

Of course, as part of this approach the CMC continues and will continue in the future to investigate those matters that require our attention, the more serious matters, the systemic issues and those investigations that require the use of the additional powers that the CMC has. We will also monitor the way that public sector agencies deal with those matters referred to them. In its strategic planning for the next five years the need for this close monitoring has been acknowledged by the commission as being a key focus of our misconduct area. Mr Lambrides will speak to you more on these matters.

I will touch briefly on other areas of the CMC. I have already mentioned crime with respect to the amalgamation of the two organisations. As set out in our submission, work has continued with respect to organised crime and paedophilia, and the various successes that the crime area has enjoyed in those areas over the past three years are set out in our submission. We accept that we are not an alternative police force. Therefore, we must value add to the police force. We do that by our partnerships with the Police Service and with other organisations such as, in particular, the Australian Crime Commission and the AFP.

One advantage that we have is that we do not have the pressures that a Police Service may have when dealing with the day-to-day complaints that come to them. We are able to take longer with our operations. We can allow them to run longer and we can attempt to go—if I can use the term—to the top of the tree. Rather than just finding an offender and arresting that offender, we can go past that offender while gathering the evidence that will enable us to come back to them. We can keep going up the line to ascertain who the more serious offenders are and arrest them, and thereby disrupt organised crime syndicates.

We have to make sure that we remain at the cutting edge of investigative techniques, particularly in the areas of paedophilia and the use of the internet for paedophilia. Mr Callanan will address you on this. We consider it of the utmost importance that we keep maintaining our cutting edge and that we keep training our personnel to ensure that we keep abreast of and, hopefully, at the forefront of the new technologies that are being used.

The Crime and Misconduct Act varied slightly the areas of focus of our research efforts. The emphasis on research into criminal justice—

CHAIR: Excuse me, Mr Needham, are you shortly to wind up your opening comments?

Mr Needham: I have a bit to go yet.

CHAIR: I am mindful of the time. We want to have the maximum opportunity to ask questions about the 130-odd pages that have already been submitted to us by the CMC.

Mr Needham: I can cut through matters.

CHAIR: It would be appreciated if you could.

Mr Needham: I was just noting that there has been a change of emphasis in our research area which is important to note. That change has been away from the criminal justice administration, which was the focus of the Criminal Justice Act, and aligns its role more closely to the functions of our crime and misconduct areas under the act. Ms Johnson will speak to you on that.

I would like briefly to mention the increasing role that has developed over the past few years for the CMC area of research into areas of public policy arising from ministerial references and, more particularly, requirements embedded in legislation for us to review various and particular pieces of legislation. Examples are the review of the police powers with respect to volatile substance misuse and the review of the operation of the Prostitution Act. It is worth mentioning that we have been grappling with how we report on the carrying out of these functions, as some of these matters do not slot easily into the traditional outputs that we report on of crime and misconduct, and witness protection. That is a technical difficulty that we have and we will have to face it. We will raise it with the committee over the coming year.

I will leave Mr Keen to speak about intelligence. Often it is the unsung area of the commission. Most of the output of this area never sees the public light of day.

Operation support is a vital area of the commission. Generally, we do not speak too publicly about the details of the work that is done in this area, but it is an essential area for the carrying out of our crime and misconduct functions.

I would like to mention publicly that in Queensland the carrying out of the witness protection function is done in a unique way. We are the only jurisdiction where that function is attached to the anticorruption body. In every other jurisdiction it is attached to the Police Service. Historically, that occurred on the recommendation of Mr Fitzgerald QC. In my opinion, it has proved to have benefits. Certainly, our Witness Protection Unit is recognised as the frontrunner amongst such agencies in Queensland and to some degree internationally. Our unit is recognised as the lead agency in Australia for the provision of training in the area of witness protection. We conduct training for police services throughout Australia, and our courses have been attended by officers from New Zealand, the United States et cetera. I should mention that this training for officers away from Queensland is conducted on a cost recovery basis.

Corporate support I can mention reasonably briefly. We are concentrating on two areas of particular interest: human resources management and succession planning. The committee is aware of our concerns and the work that is being done in that area. We are told that over the next few years more people will leave the workforce than join it. Like other organisations, we face the problems that will arise from that. We accept that proper planning is essential to attract and retain good staff and to train the staff we have. There is an enormous amount of training happening within the CMC this year. We can thank Mr Hummerston for his drive and assistance in that regard.

It is essential that we provide career paths for good staff in order to retain them. Again, this is an offshoot of the benefit from the amalgamation of crime with us. It is a simple matter: if you bring an additional 50 staff into the organisation, you create additional opportunities for career paths, even just for administrative officers. You may start as an AO2 in misconduct, be promoted to AO3 in crime and then be promoted to AO4 back in misconduct. It does assist. If you have a very small organisation, it is very difficult to provide reasonable career paths for staff.

Finally, in the area of corporate support I thank the committee for its support for the amendment to our legislation that enables our senior staff to remain with the CMC for a longer period. In my view, the compromise that has been legislated should assist greatly in the retention of the core of experience that is so essential to the organisation.

The other area in corporate support which is a developing area of quite some significance is IT. The committee is aware that the government has mandated, understandably so and necessarily, that EDRMS—electronic digital records management systems—be integrated into all public sector organisations in the very near future. That is a very large undertaking which is very intensive in its use of resources and money. Tied in with that is the need for what is called digital migration: to move away from analogue recording, going away from video recording to digital recording in all our interviews, video recording—like in this situation here—hearings, et cetera. That is on the corporate side. On the operational side there is a great need, of course, for the CMC always to be maintaining its edge with respect to evolving technologies in the operational aspect and the challenges that they pose to investigations.

There are a few general matters I will mention before I close. In relation to the issue of cooperation across areas of the commission, in any organisation it is vital that we do not allow the development of bunkers or silos. We must have it that misconduct works in with research, misconduct works in with intelligence and crime works in with those two same areas. It is a process that was being worked on when I joined the commission; it is a process that we are continuing now—to all the time make sure that our various areas are working in together and utilising the synergies that can come from the combination of resources in each of the areas; that they do not work as separate silos. That is an area, as I say, we are working on all the time and I think we are getting better at it all the time. We need to do the same thing externally and we are working on that. That is in cooperation with like agencies around Australia: ICAC, PIC and the Ombudsman in New South Wales, the Office of Police Integrity in Victoria, the CCC in Western Australia. There is a great synergy that can be achieved with cooperation between these agencies and quite a deal of work has been put into ensuring that the best is obtained out of the cooperative effort of all of those organisations. We will continue to do that.

Referral of matters of misconduct investigation briefs to the DPP has been an issue of some concern over the years. It was addressed at the last three-year review. It is referred to at pages 20 and 21 of our submission updating the committee on what has occurred since that time. We state there that we were in the process of negotiation with the Director of Public Prosecutions. That has been resolved. We

have put in place a protocol with the Director of Public Prosecutions whereby we have reached agreement on which matters will be referred to the DPP. Those matters will be those that are of considerable public interest, those which may call for the exercise of the prosecutorial discretion and any other matter in which the commission feels the need to seek the advice of the DPP for any reason.

Apart from those matters, it is envisaged that the commission—because finally, of course, it has to be the exercise of discretion by the individual police officer—will ask the appropriate police officer within the organisation to consider whether he or she should commence the charges. We will do it that way. At the last three-yearly review this issue was looked at to ascertain whether it required a legislative change. With respect, my view is that it does not. I am reinforced in that view now, and it has been put beyond doubt, by the recent change which came in just last week to the Crime and Misconduct Act which, amongst many other changes, inserted an additional subsection in section 255 to make it utterly plain that police officers who are seconded to the commission retain all their powers as individual police officers. Fortuitously, there has been an amendment put in place brought about by the cross-border legislative changes that has put that issue beyond doubt. Hopefully that should assist to avoid the problem that there has been in the past of delays in commencing prosecution after the finalisation of the investigation in some of the matters. Of course, some will still be referred to the DPP.

I will not go through all the various submissions; some of them will be dealt with by Mr Lambrides and Mr Callanan. There is just one that I should mention because it is a matter in relation to which I have had particular contact. It is the initial submission from the Department of Local Government. I understand a second one has been put in. I understand that the second one is under the hand of the director-general; the initial one was not. I must say I was a little bit surprised at what was in the initial one; it did not coincide, firstly in one aspect, with what occurs and, secondly, in another aspect, with the agreement that I had reached with both the previous and the present director-general. That is where the person who wrote the submission or signed it said that to require the department to investigate and prosecute allegations of suspected misconduct relating to local governments can lead to it—the department—playing a regulatory role in respect of local governments, a role that it is not intended that this department plays.

Firstly, the CMC never has and does not intend to refer to the Department of Local Government for it to investigate any complaint about the actions of official misconduct within a local government. If there is a complaint that a local government might not be paying proper attention to the provisions of its town planning scheme, things of that nature that have nothing to do with us and are more properly within the realm of the department, we will refer that to the department. But we do not refer any other allegations of official misconduct about local governments to the Department of Local Government.

The second aspect is whether the department should prosecute breaches of its own act. I have discussed that with the previous director-general and with the present director-general. Both of them agree with me that it is the appropriate and normal course for the department to prosecute for breaches of its own act. That will be done, of course, in the normal way through Crown law. That is what occurs with every government department: each government department that administers an act is responsible for prosecuting for breaches of that act. As far as I am concerned, there is no confusion at all in the minds of the CMC and the director-general of the Department of Local Government.

The final general point that I will comment on is the accommodation of the CMC. There is a challenge facing us over the next three years, as our lease comes up for renewal, with respect to resolution of our accommodation. We are rather short on space with the amalgamation of the QCC into the CJC. The crime area then moved from the former QCC premises at Milton into the city. That was resolved to some extent by the setting up of our external premises. But with the establishment of the Proceeds of Crime Unit and with the expansion that normally occurs in areas such as forensic computing, we are in a situation where we have to look very closely at our accommodation. We are engaged in a project at the moment with the Public Works Department looking at that. It could mean that we will have to move in the next three years, which will have unfortunate disruptive effects upon our work, but that will be a challenge that we will face during the next three-year period and it is appropriate for us to flag that issue.

In closing, it is appropriate that I should acknowledge the role that the part-time commissioners play in the CMC. At present we have only three. I understand the process is underway for replacement of our legal part-time commissioner. Our part-time commissioners are from diverse backgrounds, as is envisaged under the act. Each of them is able to contribute greatly both generally and in their individual areas of expertise. I am very pleased to have the assistance of our part-time commissioners. It makes my job much easier. They assist in the accountability process of the CMC. Having people of their integrity observing closely what the executive does, without themselves being involved in the day-to-day pressures, ensures that those of us who do face those day-to-day pressures maintain a proper sense of reality in the carrying out of our work. I take this opportunity to thank my fellow commissioners for their work.

The role of the commissioners is a unique one amongst the various bodies in the public sector. We are conscious of this fact. The commission has recently sought advice from a lawyer of great experience in this area of corporate governance in the public sector to assist us to develop a manual to act as an induction tool to assist future commissioners to more quickly adapt to the unique role that they carry out in the commission. The present commission feels that this would be a worthwhile legacy for us to leave to those who follow us in the CMC. Thank you.

CHAIR: Thank you, Mr Needham. Can we just go to a number of issues that individual members of the committee would like to explore with you that are set out in certain parts of the lengthy submission that has been lodged with us. Firstly, can I take you to page 2, towards the latter part of the section dealing with the benefits of the merger which you expanded upon a little in your comments just now.

You do indicate that there are some challenges that remain which are related to the merger. You illustrate those challenges with the issue of making the research function more supportive of the major crime function. What are the other challenges that you believe remain to be addressed to make complete the merger or to deal with difficulties or problems that may have arisen because of the merger?

Mr Needham: The only challenge—and that perhaps is even too strong a word to use for it—is the aspect that I mentioned before of ensuring that all our areas work together to the most cooperative extent. The part that comes most to mind, because we have, I think, achieved it to probably the fullest extent, is between our intelligence area and crime. The main part is still in this research area. We also need to ensure at all times—and I think this is a continuing challenge—that whenever there is any aspect of misconduct that is seen within the crime area, that that is appropriately passed through, at the top level, to intelligence and on into the misconduct area and vice versa. There is that aspect and the research aspect.

We have what we call now lunchtime information sessions that we have started up where we will have one area of the commission do a presentation at lunchtime—people can bring their sandwiches along and sit and listen to it—to anyone who wants to come along of the work that they are doing and go into it in quite some depth. An example of that was the drugs research area within the CMC/RMP area. I was surprised, I must say, at the depth of knowledge that our researchers had, not just in the general overviewing research areas but right down into what one might call the nitty-gritty of use of drugs by people out there in the community. To get the benefit of that detailed experience across to the police who are operating at the operational level out there in the streets in my view is of assistance. It is no good their just having that knowledge and writing it up in reports; it needs to be able to be discussed across a cup of coffee over morning tea where the two areas can get together from time to time and the police can ask questions and vice versa so that there is this interchange of information and this synergistic effect of the knowledge and experience of both of those areas can be most effectively utilised.

CHAIR: One of the challenges you have just mentioned, as I understand you, is the issue of ensuring that misconduct issues that arise in the setting of the crime division of the CMC are appropriately passed over to the misconduct division of the CMC and are handled. One of the sharp criticisms of the proposed merger before it took place was that there would be a problem in this area—that, in the one organisation, you are investigating police misconduct, yet you may be involved with the police directly in the crime side of the organisation, which may itself indicate the existence of misconduct. So what is happening to ensure that that concern is presently now, as experienced, an unfounded concern?

Mr Needham: It is inevitable that, when investigations are underway into organised crime, there is always the possibility that those investigators can see what might appear to suggest police involvement. That is always a possibility. That possibility is there whether the organised crime investigators are part of a stand-alone organisation, like the QCC, or whether they are part of a crime area within the combined organisation as we have now. Whenever it is seen, we have to ensure that that knowledge is passed across appropriately to the misconduct area so that it can be fully investigated.

My view is that we are better placed to do that when the two organisations are together: that is, where the heads of the crime area—that is, the Assistant Commissioner and the Director, Operations, the Chief Superintendent—are part of the SMG and are meeting at meetings on a very regular basis with the intelligence area and also with the misconduct area. It is more likely that that will be passed across appropriately when you are working so closely together and seeing each other on at least a weekly basis.

CHAIR: How do you avoid the perception that you are investigating yourself?

Mr Needham: Well, we are not investigating ourselves in any way in this respect. What I am talking about is where our organised crime investigators see the possibility of other police being involved in organised crime.

CHAIR: Who themselves are not directly involved in the CMC.

Mr Needham: Who themselves are not involved in the CMC.

CHAIR: Okay.

Mr Needham: If you are talking about the possibility of police within our investigators being corrupt, then we get back to the point I made before—that is, one of the extra benefits is the additional accountability that our crime unit is now subject to, in that they are subject to not just the accountability of the Crime Reference Committee of the commission itself as being part of the larger organisation but the accountability of the organisation to this committee.

CHAIR: I do not want to pursue this endlessly, but just on that point: I do not know that this committee would get to know that there was a problem of a conflict of interest inside the organisation because police directly involved on the crime side were also involved in potential misconduct and the difficulty of how the CMC handles that, unless obviously you assure us that under the act there is a self-disclosure to us.

Mr Needham: There is. Under the act there is—it is section 329—and also under the protocol we have with this committee. As soon as any indication comes to us or the senior officers, say, within the crime area that there is a possibility that Senior Constable X is involved in nefarious activities, then that has to be reported to this committee, and the investigation of that would then be under the guidance, or under perhaps the day-to-day control, of this committee. I would imagine what would happen is there would then be an investigation which would be oversighted by the Parliamentary Commissioner.

So there is that level of accountability, whereas if we had it still as the QCC, that investigation would be undertaken, I have no doubt—it would, I would anticipate, be referred to the Crime Reference Committee—but there would be no body or no position such as the Parliamentary Commissioner who would be able to oversee the investigation. It would not be overseen in any way. That risk is there whether it is a stand-alone QCC or whether it is part of the CMC. At least, as I said, in being part of the CMC, it is subject to these additional accountability regimes that the CMC has.

CHAIR: When you report those situations to this committee, is it the chairperson reporting them or is it the commission reporting them? In other words, does the whole commission become aware of the existence of this suspicion of official misconduct?

Mr Needham: The whole commission would become aware. Something like that would always be reported to the commission. I would need to check section 329. From memory, I think the obligation under 329 is cast on the chair, not on the commission. I cannot speak about the future, but I can certainly speak about while I am in the chair; that sort of thing would always be reported to the commission.

Mr HOBBS: I am interested in your comments, and I am also interested in the local government response in relation to that second letter clarifying their first letter. I am trying to get my mind around exactly what they really mean. I accept what you said; I think it is quite right in so far as that it is the CMC's role to do an investigation of a council or a councillor when issues arise there. I wonder if this official letter from the Local Government Association was not so much referring to the investigation part of it but the prosecution part: that is, where the CMC does its investigation, makes recommendations and then dumps it to the department—which is its role of course—if the act has been breached. Would they be complaining about that? For example, if the recommendations of the CMC were to prosecute but the department decide that it was a technical breach, they are then lumbered with this prosecution that may not stick. Is that what they are talking about, do you think?

Mr Needham: I do not think so, with respect. What happens is that under section 49 of our act we never tell a department or indeed any prosecuting authority that they must prosecute. That is not our role. We do not have the power to do that and we do not do that.

What we are empowered to do is to send it to an appropriate prosecuting authority for their consideration of what action is appropriate. So if it was a criminal matter, we would send it to the DPP—now it will be subject to this protocol—for the DPP's consideration as to whether prosecution should be commenced. With respect to any prosecution under the Local Government Act for any breach of that act—we would refer it—as we did in fact in the Gold Coast City Council report—to the Department of Local Government for its consideration of any prosecution. What then happens of course is that it then seeks the advice of the Crown Solicitor and the matter would normally be briefed out to a private counsel.

We acknowledge in sending that that there are of course circumstances where a breach might have occurred but for one reason or another it might be decided not to prosecute. That is purely in the hands of the department. If the department determines not to prosecute, that is its determination. We have done our duty by referring it to the department for its consideration. If I might say, in regard to the Gold Coast, it is perfectly possible that it might decide to prosecute none, it might decide to proffer some prosecutions and not others or it might decide to proffer all of them—that is its determination.

Mr HOBBS: Just following on on that second one there, in this last paragraph, the executive director of corporations, executive services, writes to you and says, 'I understand that initial review of internal CMC procedures regarding local government referrals will take place.' This was in relation to a meeting on 15 March. Does anyone know exactly what was committed in that particular instance?

Mr Needham: I understand that meeting was at a much lower level within our organisation. On my understanding—and perhaps Mr Lambrides might be able to speak on this more—I did ask about that and my memory is that that was an initial meeting about the changed section 40 directions that have been put in place with the departments. That was the meeting with the local government department. But those section 40 directions with the local government department are not dealing with complaints about local governments; they are complaints about officers within the department of local government. With respect, I think this person who wrote this submission does not really understand what is going on.

Mr CHOI: Section 34 of the Crime and Misconduct Act outlines the principle for performing the misconduct function by the CMC. It covers the subject of devolution which states that the action to prevent and to deal with misconduct should generally happen within the unit. For those who are familiar with the works of the CMC or those who work with an agency with a high disciplinary regime such as the Police Service, they would understand the critical if not crucial role of internal investigation for the purpose of building awareness within the agency and perhaps developing a suitable culture within the unit.

On the other hand, there is also, in my opinion, a growing public concern about the CMC delegating its role or in a general sense allowing Caesars to investigate Caesars. It is interesting to note that section 34 of the act also states that the CMC has the overriding responsibility to promote public confidence. My

questions to you are (1), do you think the current devolution mechanism in terms of when and whether to delegate the investigation is working; (2), how do you ensure that the agency which the CMC intended to delegate to has the capacity to do that job; and, (3), how do you address the growing public concern in terms of devolution of these tasks by the CMC?

Mr Needham: The first point is that I do believe that it is working. We receive, as you are aware, 4,000 or more complaints per year. Quite a percentage of those are determined as not warranting any form of action at all, but out of those that are determined as warranting action, about four per cent of them are investigated within the CMC. When I say four per cent, it is four per cent of the total investigated within the CMC. The balance then are referred back to the individual unit of public administration—be it the Police Service, a government department or whatever—for that department to deal with. That does not mean to say that even all of those warrant a formal investigation. A lot of them are more managerial matters. They are of small enough moment, albeit they fall formally technically within the definition of official misconduct, but they are more managerial matters and can be dealt with without a formal investigation.

It is always difficult, as we point out in our submission, to judge how that is working, but we see that when we do survey the public about their attitudes to the QPS and to the public sector—and that survey was done not so long ago and is being reported on this year—the attitudes have remained approximately the same and in some areas have improved. That tends to suggest—and here I am jumping to your third point—that there is not a growing concern among the general members of the public that the attitudes are the same as they were previously. I cannot say that they have improved enormously, but also it does not show that the attitudes in the public have worsened. As to whether it is a growing concern, that idea is perhaps fostered at times by the media. It might be anecdotal reports that they are relying on or it might be something plucked out of the air. One can never tell with the media; they generally do not tell us the basis of the opinion that is asserted.

With respect to the capacity of the departments to handle them, that is a very large part of the role that was placed upon the CMC by the changes brought about by the Crime and Misconduct Act. As you are aware, that was a significant change from the statutory form that applied previously, albeit the CJC had already taken on, to quite some degree, that role itself with the concurrence of the then parliamentary committees. Whether that has worked, one can only judge it perhaps best by the comments in the submissions that you have received: that the departments all feel that the assistance they have gained from the CMC in that has been of great benefit to them in their abilities to properly handle the matters that are referred back to them.

It gets back to the point that I said in my opening comments and that I try to say publicly whenever I speak of these matters: that we are not going to ensure proper standards of integrity within our public sector by the CMC wielding the big stick all the time and that being the only thing that it did. It is impossible for us to investigate every complaint that is received. In my view, and in the views of most other commentators, it is not appropriate for it to be done that way. But even if we were to enlarge our resources enormously to enable us to take on, say, four or five times the number of complaints we do now, that would mean that in an organisation the size, say, of Queensland Health, which I understand has about 60,000 employees throughout the length and breadth of this state, it might mean that across that organisation it is only one of the 400 UPAs that we oversight. It might mean that we would do, say, three investigations a year for them instead of, say, one. What extra assistance is that going to have for the individual employee within Queensland Health to ensure that they comply with all their ethical obligations? With respect, it is not going to have any. It is not going to work that way.

What must be done is to inculcate within the public sector and to get it down to all the workers. The notion of integrity has been the normal way that you work. By integrity, of course, I just mean honesty. We talk about integrity and ethics. Really, if you bring it all back it is just honesty; that you carry out your duties honestly in all ways. That will only be done when that is accepted at all managerial levels of the public sector organisation—at the highest level—and I think in most areas there is no doubt that that is there.

But it also has to get through to every middle manager that it is part of their role to ensure it is there in all their staff. If it is not there in all the managers it is not going to be there in the individual employees. Research has shown that an ethical organisation can make a person who is perhaps inclined not to be ethical to act ethically, but if you have an organisation that does not have this ethical basis inculcated through it, it can make a normally ethical person act unethically. So it has to be there in the organisation. That means we are confronted with the reality that we must have devolution. That is my view. It is been the view of this parliamentary committee in its last reports now for the last four or five reports that have been issued. It is echoed in comments made throughout Australia by other bodies that have looked at this particular problem. When we accept the reality that we must have devolution we then just have to look to make sure that we ensure that it works as best we can.

Insofar as getting it across to the public, that is very difficult. I speak about it whenever I can. I speak at various functions, but they do not get reported generally. If they do, quite frankly, they are not going to be read by members of the public. They are only going to be interested in a very general way and then more particularly when they have a complaint themselves. But it is not a matter that is going to knock the State of Origin off the front page of the *Courier-Mail*.

It is a very difficult thing to get that message across to the general public—to explain to them and make them understand why devolution is the only way to go. But we can only keep doing it. We rely as well, of course, on everyone else to convey that same message; for all parliamentarians to convey it to their constituents. We try to get the message to the press so that the press will understand, and convey, that message. That is the only way we can do it.

Mr COPELAND: Mr Needham, the whole area of devolution is obviously one that the committee and the commission have spoken about at length. I agree that we have to raise the standards within those UPAs, but I think it is also fair to say that different UPAs have different abilities to cope with the investigations or the quality of the investigations. We have raised individual cases in the past about whether that is actually happening or not. With the oversight that the CMC gives of the UPAs' investigations, because it is the CMC not the PCMC that has oversight over that, is the CMC doing enough to ensure that the timeliness, the accuracy and the quality of those investigations is being carried out to the best that it can be done? I think timeliness is certainly something we have been on about with the CMC, and the CMC has gone to great lengths to improve that, but I think there are also questions about whether those UPAs are doing as much as they can to address those sorts of issues.

Mr Needham: The short, honest and frank answer is, no, we are not doing enough. We are not doing as much as we would like to. It is a matter of what we can do with the resources we have. As I mentioned earlier, part of the strategic initiatives that have been adopted by the commission in its planning is that one of the key areas where we have to focus our resources is in the area of monitoring. We are attempting to do that. There is a restructure, if I could call it that, going on at the moment between the two areas that deal with that which, unfortunately, are separated, but we are making them work better together in that capacity building previously was situated within Complaints Services, and it needs to be closely allied in that area. Prevention was situated in Research and Prevention. One of the things we looked at is having those two areas working more closely—effectively, together—and that is underway at the moment.

In the reorganisation, we feel that we have achieved the effect of enabling us to put more resources into that area. We are restructuring it in such a way that we will be skilling more people in working in that particular field of auditing—of going into public sector agencies and looking specifically at how they are handling their complaints within the organisation. We are very conscious of the need to monitor closely, and to assist, public sector organisations to build their capacity. We are carrying out activities at the moment that we trust will assist us to put extra resources towards that. We would like to be able to do more.

As I mentioned earlier, it always frustrates me a little bit when we hear journalists throwing around the figures of our budget. As any person who deals with these public sector budgets would know, the amount of discretionary spend is very small. Most of it—72 per cent to 73 per cent of the budget—is taken up with salaries. You then have your other fixed costs such as your rental and all those costs that you just cannot avoid. When you get down to it, it is like your household budget: there is a certain amount that you are not going to be able to avoid—you have to pay off the mortgage each week, you have to pay your kids' education, you have to put food on the table. There is then the discretionary spend over the top, and that discretionary spend is very small. But within that discretionary spend, one of the areas of emphasis that the commission has recognised is that monitoring the way complaints are dealt with and assisting UPAs to better deal with complaints is an area of strategic focus and we must put more resources out of our discretionary spend into that area.

CHAIR: We might adjourn for morning tea, and we will resume after morning tea with Mr Needham.

Proceedings suspended from 10.25 am to 10.49 am

CHAIR: Ladies and gentlemen, thank you. We will resume. I want to indicate a number of procedural changes for this hearing. What we propose to do to maximise the time available in the remainder of the day is to continue with submissions from Mr Needham, and then to move to submissions from Mr Callanan and Mr Lambrides, is that we are wanting to free up some of the time for the remainder of the day. Consequently, we are indicating that we will postpone to a date to be fixed any oral submissions from Mr Keen, Ms Johnson and Chief Inspector Grayson. We will liaise with the commission of course about a further suitable alternative date whereby we can have submissions from them.

Secondly, what we invite Mr Callanan and Mr Lambrides to do when they address the committee is to limit strictly to five minutes their opening contributions, again to maximise the opportunity for questions from the committee. In the event that there are matters in Mr Needham's initial opening statement which time did not permit him to communicate to us this morning, we are happy to receive those points or submissions in writing at another occasion. Further, if there are matters that Mr Callanan and Mr Lambrides would otherwise have wished to draw to our attention in their opening statements which the five minutes does not permit them to do, we are happy to have that drawn to our attention and to receive something in writing in that regard.

Finally, can I indicate that, in the event that there are matters which are not canvassed today which the CMC personnel who are speaking to us today believe they need to present orally to us on another occasion, then we are happy to do that as well. The purpose of all of those procedural matters is to ensure that we have the maximum time available for our committee to meet with you and ask questions and engage in discussion in an interactive way for the purpose of us better understanding the submissions already made to us by your organisation and other organisations. Thank you very much for that. I do

acknowledge that there appears to have been a misunderstanding and perhaps not the best of communication prior to today that may have led to things happening the way they have so far this morning. So my suggested procedural changes are in no way an adverse reflection upon the parties this morning. Thank you very much. We will now ask questions of Mr Needham.

Mrs LIZ CUNNINGHAM: I want to refer to some comments that you made, particularly in relation to devolution to the QPS, because that is probably the area of devolution about which I have received the most concerning comments. You have said that it is difficult to judge how that devolution is working, but you referred to the public survey. I guess a general public survey—if that is what it was—would reflect a fairly generic or general response, because if as an individual the respondent had not put in a complaint then they are going to say, 'Oh, no. I think it works okay.' The responses that I have received or we as a committee have considered have been in terms of complainants in particular who have had concerns about the devolution to the QPS being, in their view—and I think a previous speaker mentioned it also—Caesar judging Caesar. I wonder, then, on the basis of your subsequent comments about needing to allocate more resources to oversighting those investigations, what procedures you could see the CMC or the PCMC using to give complainants peace of mind that their complaints are being objectively and, perhaps in an isolated sense, independently reviewed even though they are devolved to the QPS.

Mr Needham: The second part of that is independently. If they are going to be devolved—and I think this committee supports devolution—they are going to be investigated by a police officer, but the CMC agrees that it must be an independent police officer who investigates them, and that is a matter that we have discussed with the Ethical Standards Command within the service. We are all in agreement that there must be that independence between the subject officer and the investigator. It should be investigated within the region rather than an investigator, say, from Brisbane going up to the Atherton Tablelands to do an investigation.

If I can take the example the other way, if it is a complaint about a relatively small office such as Mareeba—do not ask me how many people are in these, but I imagine that something like Mareeba is not going to be a huge police station; I would not know the number who are there—and it is a complaint about a senior constable there, then it is totally inappropriate that the investigation should be carried out by the sergeant who has control over that senior constable or even by the senior sergeant. It should be at least the inspector in the area who is doing the investigation. If that inspector is closely allied with the subject officer—if he knows him as a friend, if he has social interaction or there is some other connection of that sort that makes it inappropriate—then someone should be brought in from outside the particular district within the region. For example, an officer from Cairns who does not know the subject officer should come up and do it.

I agree that is totally important—very important—and there is no argument with the ESC on my understanding of that and that is the way it has to be done. That is the agreement. That is one of the matters that is looked at in the audits that are conducted by the CMC of the investigations carried out by the QPS. It is a matter that is looked at beyond the audits to the matters that are reviewed in more detail. As you would be aware, there is a percentage of the investigations carried out by all of the UPAs where the investigation is reviewed in detail by officers within the CMC. Approximately eight per cent of all of the investigations that go out to all of the UPAs, including the QPS, are looked at by way of those full reviews.

Eight per cent is a little bit under one in 12. It is not a bad sort of statistic if you are looking at full reviews. Then there are the other audits where they are looked at not in as great detail, but certainly matters such as independence is an obvious matter that is always looked at and the methodologies of how the investigation was carried out can be looked at without having someone sit down and look at all of the source material and conduct a totally full review. So the only way we could ensure that is to make sure that the unit of public administration understands the need for that independence of the investigator from the subject officer, that they put it into practice and that when we do our checking—our looking—at what they have done our officers know to look for those sorts of things and to ensure that they are carried out. If we see any instance where they are not, then that is a matter where we have to correct it within the organisation and we have to make sure that they know that that is not to be done that way in the future. As to getting it out to the public for them to have that confidence, that is the matter I spoke about to Mr Choi earlier. That is very difficult.

There are the two things. The complainants should be able to be satisfied—not necessarily satisfied with the outcome, because they will have their own view of the matter which might not be what an independent investigator would support. We have to accept that. So they might not always be happy with the outcome, but they should be happy that their complaint has been given a fair hearing. That is what they should be happy with at the end of the day, even if they are not satisfied with the outcome of the complaint if it did not go fully their way. They should be satisfied that their complaint has been given a fair hearing.

Mr ENGLISH: Mr Needham, in legal terms definitions are very important for categorising things and ruling things in and ruling things out. One submission that we received made some comments about the definition of 'conduct' in the act. Generally, in my humble opinion, three definitions that are very important within the act would be 'conduct', 'misconduct' and 'official misconduct'. Do you have any concerns about those definitions, and would you be advocating any change to any of those definitions?

Mr Needham: No. I have no concerns about those definitions and I am not advocating any change. I think I know the submission you are referring to where the person has totally looked at 'conduct' in the wrong way, and I can understand that. But it is very difficult to draft a piece of legislation so that it is certain and so that it can be understood by every man in the street. If one works through the definitions of 'conduct' to 'misconduct' to 'official misconduct', it is fairly plain in my belief what is meant by it. The definition of 'official misconduct' is mentioned in a number of submissions in that they consider the threshold too low in that it really only talks about a suspicion. It is conduct which if the allegation is correct amounts to official misconduct—criminal conduct or conduct deserving of a person being dismissed if they are an officer.

There are a number of submissions which would advocate that it must be reasonable suspicion before it amounts to official misconduct. The difficulty with that, of course, is that it leaves it open to an officer within a unit of public administration who does not want to perhaps properly deal with a complaint to say, 'Well, I didn't have a reasonable suspicion. The information that was presented was not enough to give me any reasonable suspicion. Therefore, I didn't report it.' That is not what is desired. That is not the intent of the act, and it is not what I believe should be covered by the act.

The idea behind why this threshold is set at the level it is—and I think that legislature has done this deliberately—is so that matters are reported and are not able to be swept under the carpet, as it were, within a unit of public administration. They must be reported to us. That does not mean to say that we will deal with them, but at least if the matter is reported to us then that makes it more likely that the matter is going to be finally dealt with appropriately within the department rather than being swept away. Quite frankly, I cannot think of any better way of redefining those particular matters within the act which would achieve what the act seeks to achieve.

CHAIR: In relation to surveillance devices, which is canvassed on page 10—that is one of the places within the submission—does the commission find the role of the Public Interest Monitor to be effective when it comes to surveillance devices?

Mr Needham: It might be better if that question were addressed by Mr Callanan. I am not ducking the question. As far as I am concerned, it is an effective role, but I do not have day-to-day contact with the Public Interest Monitor. May I put it this way: since I have been there I have not had any matters raised with me by the Public Interest Monitor of any concern. I do know from my past experience that what has happened over a period of time is that there has evolved between the agencies, which is both the QPS and the CMC, an understanding of the requirements that should be inserted into warrants that are issued by the courts. There is an acceptance by the two sides that these conditions are required to adequately protect the public interest in the matter. There is no argument. They are just put in.

May I put it a different way. I am a member of the Controlled Operations Committee, together with a retired judge and a delegate of the Commissioner of Police. I could delegate that but I choose to remain on the committee myself. It is very rare that we have a concern about any matter that is brought before us, but that does not mean to say that the situation does not work effectively, because we are the oversight and the independent member is the oversight there with respect to the controlled operations. That does not mean to say that it is not an effective system—the mere fact that rarely do we raise any issue.

The safeguard is in fact the system having to be there and that it has to go before this independent person. When that safeguard is there it ensures that the particular police officer, be it within the CMC or the QPS, knows that all of these things have to be addressed. They have to be thought about, they have to be answered and they have to be covered in the material that goes before the Controlled Operations Committee and, in particular, the independent member. Those matters are all thought about, addressed and set out clearly for us when we sit down to address whether we should recommend approval of a particular operation.

CHAIR: So are you saying that the role of the Controlled Operations Committee is analogous to the role of the PIM insofar as it impacts upon the applicant seeking approval for whatever application they are putting forward?

Mr Needham: It means that the police officer who in our case, with the assistance of a legal officer, is drawing up the material for the application knows that all of these matters will have to be addressed in the affidavit that is supporting the application, because if they are not the PIM is going to raise the issue. So all of those things are set out. It is known. They are all addressed. All of that information is put in the affidavit to go before the court. It is that system that on a day-to-day basis provides the necessary accountability structure. So when it goes to the PIM, if they have slipped up and left out a particularly relevant piece of information, then the PIM of course will pick them up on it and make them produce extra material that addresses that particular point.

CHAIR: So without the PIM and without the Controlled Operations Committee you could not have the level of assurance needed that all appropriate matters have been taken into account in the formulation of the application that is placed in front of a judge.

Mr Needham: One would hope that it would occur anyway. The committee and the PIM, in my view, are the mechanisms by which it is ensured that that is done in every single case so that, with the pressure of the activities, you do not become a little slipshod, say, and not address all of the issues and put all of the appropriate information before either the committee or the judge.

CHAIR: In your experience, has there ever been occasions when the role of the PIM or the Controlled Operations Committee has actually been an obstacle to the commission achieving the objective that it wants to achieve?

Mr Needham: In the time that I have been there, 18 months, I have not seen that with the Controlled Operations Committee. I must say that we do not do very many controlled operations. We do with what is called our Atrax operations on the internet with paedophilia. That has been going on for years, and the way that has been conducted is very strictly controlled. Very rarely do we do another controlled operation. I think there have probably been about three and there has been no difficulty. But it is all done properly of course. It is all addressed properly before it is put before the committee.

With respect to the PIM, I would defer that question, if I may, to Mr Callanan. I know of no circumstance where that has occurred—that the PIM has been an obstacle to obtaining what the CMC has sought. I know of none, but Mr Callanan would have more close knowledge of that than I would.

CHAIR: In relation to the terrorism jurisdiction that has recently been conferred upon the CMC, I wish to seek clarification of what the CMC sees as its jurisdiction in that regard. In other words, has the CMC now got a lead agency role in relation to terrorism?

Mr Needham: No, we do not. Our role in terrorism is really very limited. We have no operations in it on a day-to-day basis at all. We are, in effect, one might say, sitting, waiting and ready. I was not there when it was brought in, but my understanding—and the way it operates now—is that it was placed as a standing reference to our crime area, the reason for that being that if we had the power in particular of coercive hearings, of bringing people in and making them answer questions—the Queensland Police Service does not have that. If they felt the need to utilise that power in a terrorism related matter, if they had to go through and make an application through the Crime Reference Committee, again, there are ways that has to be done and that is a process that can take some little time. Of course, if it were urgent it would be done very quickly, but it could still delay it for a period of days. We would have to get the committee together, we would have to meet and we would have to consider that matter et cetera. By having it as a standing reference it means the police can come to us with a situation where they say that they need to bring this person in. We would look at that. If it fitted within all the requirements then we would be able, as a matter of urgency, to convene an urgent hearing.

I would need to consult with the details of the legislation because it is not something I look at every day, of course. My memory is that to get a notice requiring a person to appear immediately before a hearing we have to get the approval of a Supreme Court judge. So we would immediately, or as quickly as we could, get before a Supreme Court judge. We would get that notice out, it would be served and the person would be in at the hearings. So our role is really to assist the police who have the lead role in Queensland.

CHAIR: So it is the QPS that has the lead role.

Mr Needham: Yes.

Mrs LIZ CUNNINGHAM: I want to ask a follow-up question on the surveillance devices. You discussed the role of the PIM and the Controlled Operations Committee, particularly at the front end. After those surveillance warrants have been in operation, do you have an auditing process, perhaps a collating process and a response program for perhaps exceedence or noncompliance of warrants?

Mr Needham: Again, Mr Callanan would be more across the finer details than I would be. My understanding is that at the completion of the period of each warrant there is what is called a compliance affidavit filled out by the appropriate officer who is in charge of the operation of the surveillance, where that person completes an affidavit which goes to the Supreme Court setting out the details about compliance or otherwise with all the terms and conditions of the warrant. My understanding is that that is also supplied to the PIM. So there is that post accountability.

Then the second level of accountability is the parliamentary commissioner, who each year in his annual audit—and they often have a bit of a dig at me and say that I trained Mr Kunde too well—Mr Kunde wields his green pen very well looking through every single instance of the exercise of coercive powers by the CMC during the year that the audit is conducted for, checking every single thing as to whether it has been done appropriately. So there are those two aspects of post accountability vis-a-vis the surveillance warrants.

Mr CHOI: When I asked the question about devolution I accepted the fact that there is a necessity as well as a benefit of having devolution. That is beyond dispute. But that leads to my question about public confidence in the CMC. I accept your statement that there does not seem to be a public outcry or a total lack of confidence in the CMC. Nonetheless, I for one believe that confidence in the CMC is extremely important not only in terms of public confidence in the governance of this state but also in terms of the CMC being able to do its job. You mentioned the difficulties of getting positive stories in the press, and I accept that as well. Has the CMC got any strategy in place to try to improve the public confidence of the organisation? And I do not mean an advertising campaign.

Mr Needham: We do have a communication strategic plan that deals with communication, both externally and internally. Off the top of my head I cannot cite all the details within that plan. However, it is envisaged that not only I but also other appropriate people within the CMC should be available, where appropriate, for media comment. It is a fine line that you draw, because generally most media are normally wanting to do an interview not for a good news story but to chase up some particular—

CHAIR: Bad news story.

Mr Needham: Bad news or some particular—I am missing the word—theme that they have underway at the time which is generally being done in—

Mr ENGLISH: An agenda?

Mr Needham: Yes, that is one way of putting it. I am the first to acknowledge that perhaps I should make myself more available. Those of you who have known me in the past would know that I am not a person who seeks or desires media attention all the time. I do it because I have to. I do confess that I do it somewhat reluctantly. I have a very good senior media advisor who keeps me pushed from behind to ensure that I do it more.

I did one interview earlier this year that led to a reasonably big article, which I thought had a positive effect. I am also conscious of the fact that there can be only so many articles that talk about me, because people are not interested in reading that sort of thing all the time. The general person will not read that sort of article. People who know me will read it as a matter of interest because they know me, but the normal man in the street is not interested in me. Indeed, he is not particularly interested in the CMC, unless perhaps he has had a bad experience. Then it might have that benefit that I am getting through to the person.

All that we can do, Mr Choi, is try to be proactive and positive, and try to get the good message out there as often as we can. We do have good news stories within the CMC and we do proactively try to get those out into the public arena.

Mr ENGLISH: In your opening remarks you mentioned the development of a protocol in relation to referring matters to the DPP. Previously we have raised our concerns about the lack of structure surrounding case-by-case decisions on whether or not to publicise that referral. Does the organisation have any plans to develop some more structured decision-making process?

Mr Needham: Yes. It has been going slowly, Mr English. I am aware that this matter was discussed with the committee in, I think, the latter part of last year. That is how slowly it has been going.

The commission has set up a subcommittee of the commission. Mr Drummond is on it, Dr Gow is on it, and Mr Hummerston, myself and some other relevant officers from within the misconduct area of the commission are on it. Mr Hummerston wrote to all of our like agencies around Australia seeking input from them as to how they deal with this particular issue. That has been very slow to come in. At our last commission meeting, which was held last Friday, it was reported that they have now all been received and it is left to Mr Hummerston to arrange a suitable date to meet. It is fairly easy for those of us who are there all the time, but he has to arrange a date when Mr Drummond and Dr Gow can meet with us and consider that issue.

Hopefully, it will be made a little easier—though it will not solve the problem—when we commence the prosecution by preferring charges by the officers within the CMC, because then that can be announced. Of course, one of the categories is those of considerable public interest and they will still be going to the DPP. It is those ones that cause the problems, because generally the media and the general public do not even know that we are investigating other matters. There might be some in that category of lesser moment, but it will not solve the problem with the ones of more public moment. They will still go to the DPP and we will still have to face that issue. Quite frankly, we have not yet resolved on a general process. As I think I have said previously, this is a matter that we face fairly rarely. It has not faced us since we have spoken to the committee about it.

I note Annexure C to the submission, which is from the Local Government Association with reference to the Cloncurry Shire Council. There is a misunderstanding and an assertion about the length of time that our investigation took. That is a total misunderstanding. Their thoughts on the length of time that our investigation took are misleading because it was with the DPP for a period over what they thought was our investigation. This is a perennial problem that we face. These sorts of criticisms are put through generally to this committee, the Local Government Association and, through the Local Government Association, to every other local government throughout Queensland. You are all hearing this criticism of us, which is based upon a misunderstanding of what actually occurs. The short answer is that we have not finalised it yet. We hope to.

Mr COPELAND: I want to return to the issue of the surveillance devices and the PIM's role in that, and then move on to TI which obviously the previous committee recommended in its report. One of the reasons that it has not come up is because of the lack of a role for the PIM, on my understanding, under federal law at the front end. Do you think that the PIM's role to monitor after the event is sufficient protection for the public interest? Is there sufficient oversight of TI should that be the only way that the PIM can be involved? Is it your understanding that that is the only way that the PIM can be involved?

Mr Needham: To my understanding, the CMC, and I think the CJC before it, has consistently said that it is very accepting of the role of the PIM, both before and after the issue of any warrant for TI if that power was to come in. That is still our attitude. It would cause absolutely no concern to us if the PIM was put in there as a full before accountability and after accountability. One could imagine that the better one for us would be the parliamentary commissioner, but that is up to government and we would accept whatever.

As to whether it is necessary, I think that there is the possibility that it could be done by way of a compromise. I understand that some talks are taking place on that. A compromise situation would be something less than a full accountability with the PIM before. I would prefer not to go too much into that publicly.

CHAIR: At page 14 you say that the commission holds the view that there should be amendments to make private entities that exercise public functions more accountable. You elaborate on page 15. That issue was canvassed in passing at the last three-yearly review. Has the commission itself done any research or work to assess the way in which this activity happens in other states and its suitability for the Queensland setting? Has the commission identified any non-government organisations that might be more readily amenable to oversight by the CMC in preference to traditional commercial organisations in the private sector?

Mr Needham: No, we have not done any research at all in that area, Mr Chairman.

CHAIR: In addressing the issue that you raise with us, the committee would need to rely largely on the sentiments expressed in these couple of pages of our submission?

Mr Needham: Yes. I must say—being quite candid about it—that there was not any deal of effort put into this particular submission. Really, we have said that our attitude has not changed from last time. From memory, last time the committee said that it was too soon after the new act had come in and that, when appropriate, it was a matter that perhaps should be considered by government as to whether to enlarge it, together with the necessary additional resources being given to enable it to be carried out.

CHAIR: Prior to the last CMC submission, was any research work done to form the basis of its then proposition to expand—

Mr Needham: Not that I am aware of. I have not seen any. Of course, I was not there.

CHAIR: Earlier, you gave an answer indicating that about 4 per cent of misconduct allegations to the CMC are retained by the CMC for investigation directly by the CMC, and the other 96 per cent are devolved to the relevant agencies, with various oversight mechanisms but for them to investigate. An issue of interest and potential concern for the committee is that our committee is charged with monitoring and oversighting the work of the CMC.

There have been occasions when complaints have been made to us about the way in which the Queensland Police Service has conducted an investigation into an allegation of misconduct and perhaps also official misconduct. We have taken it up with the commission and discovered that the matters were handed back to the QPS for it to investigate directly. Consequently, the effective oversight that the committee is exercising over the CMC is into the appropriateness of the CMC's decision to devolve the investigation of those allegations to the QPS. On all occasions that I recall, the CMC has reiterated its confidence that the decision to devolve was appropriate.

The concern is that, through that devolved arrangement, this committee loses a substantial amount—if not all—of its oversight capacity in relation to the investigation of an allegation of official misconduct. Do you have any observations that you would like to make about that development?

Mr Needham: What you say is correct in that that is a direct result of the changes to the act. I am talking about the complaints that come through to us that we report to this committee, and I am speaking anecdotally because I have not counted up the numbers on this. With most of the matters we have been involved in some way. Quite often, the person has come back to us before they have come to the committee. Therefore, we have become involved in the details of the investigation carried out by the QPS. Therefore, we report to this committee and, through us, you see the details of what the QPS has done. In those circumstances, you are then oversighting our oversight of the QPS. If we form the opinion that the investigation carried out by the QPS was an appropriate investigation, then our report back to you sets out the bases for that opinion. You are able to then make your own assessment as to whether our assessment was appropriate, if you follow what I mean. So you are looking at it one stage removed.

CHAIR: But in our experience most of the matters that have given rise to this issue have not been matters in which the CMC has remained involved through an oversight mechanism. Secondly, when the report comes to the committee from the commission, not always—and I would think not often—does the report to the committee also include an appraisal by the commission of the investigation undertaken by the police.

Mr Needham: Your memory of it would probably be better than mine because you are just looking specifically at that, whereas that is just one of many thousands of things that I am looking at. I would accept what you say, of course.

CHAIR: The consequence is that through this elongated oversight we are potentially significantly restricted in the capacity for us to engage the parliamentary commissioner as our agent to thoroughly examine an investigation that has been passed to the Queensland police, or any other agency for that matter, for their direct investigation. On one view of the law—there is another view—we could not authorise our parliamentary commissioner to investigate the QPS's investigation of a complaint against Queensland police that you did not directly investigate.

Mr Needham: I must say that it is not a matter that I have specifically addressed my mind to, but my immediate reaction would be to agree with the view of law that says that you could not ask the parliamentary commissioner to investigate a police investigation. But it goes back to what I said earlier:

that is then the result of the legislation and I would feel that it would require a legislative change to really extend the jurisdiction of this committee to reviewing not just what the CMC is doing and not only what the QPS is doing but perhaps what all the units of public administration are doing in their investigations. That would need, in my view, a legislative change.

The attitude I always take is that, when we have oversighted and become involved in the details of a QPS investigation, in my view it is always totally appropriate that we report to you on the details of all of that because that is part of your role. It does impact upon your role insofar as in at least this three-yearly process you are required to look at the operation of the act, and part of the operation of the act is devolution and how it is working. I agree that it is appropriate for you to have a good idea of how matters are being investigated within UPAs because that enables you to effectively carry out your role of oversighting the operation of the act. But I do accept and agree with what you have said about a limitation that is there in the act at the moment which means that you are not able to ask the parliamentary commissioner to ask for a file of the QPS and ask questions of the investigating officer, though you can with respect to any investigation carried out by the CMC. That would, in my view, require a legislative change.

CHAIR: Presently your monitoring of the Queensland police and other agencies is on this devolved model, and it involves reviews and audits and maybe a range of other things. Does that monitoring involve the CMC initiating inspections without notice of particular investigations that are underway in the agency and in respect of which you receive a complaint from the public about or receive a complaint from us about?

Mr Needham: To my knowledge we have never done what you might call an inspection without notice. We most certainly have required a report and even all the supporting material et cetera during the course of an investigation. As you would be aware, we have taken over some investigations where we were not happy that it was being properly carried out. This is generally a somewhat unusual circumstance. One that comes to mind is that unfortunate incident up in Cairns of the young man who ended up in hospital after the choke hold and the OC spray incident. That was one where the CMC took over the investigation and completed the investigation. But to use the methodology that you described of walking in without notice, no, that is not something that we have done.

CHAIR: Other members might have a question, but I want to ask this further question related to that. When a complaint is made to our committee about a CMC investigation, and assuming that it is one that you have retained for yourself to undertake, we initially invite an interim response from the commission about the complaint and on the basis of that make a judgement about whether we refer that to the parliamentary commissioner for him then to go and investigate your investigation. Thinking about the constraint upon our committee's oversight of devolved investigations, I am wondering whether the CMC could see a role for someone within the CMC similar to the role of our parliamentary commissioner who is empowered to, as I say, without notice, present at a particular agency with a nominated investigation that they then investigate.

Mr Needham: To some extent one would say we do that now. Most complaints do not come in during the course of an investigation. Most complaints are after the investigation is completed.

CHAIR: Even so, with that opportunity?

Mr Needham: We do that. We have people who write to us, instead of writing to your committee or sometimes before writing to your committee, with a complaint and in those circumstances their complaint will be looked at and assessed. A monitoring and support unit will get the file—the police investigation file—and review it. Some of the reviews—those eight per cent of reviews that are carried out—are carried out after we have received a complaint from the complainant about the investigation that was carried out. We will then get the full police file on it and we will do a full review. That is not an abnormal thing. That is a normal part of the monitoring process. If we reply to the complainant, often times they will still not be happy with our reply and they will then come to this committee. We report to you not only on our original assessment, but also we will include in our report to you our review of the QPS investigation.

CHAIR: Any other questions?

Mr HOBBS: Referring back to issues in relation to local governments, it is good that the CMC has taken a proactive role to actually communicate with local governments to try to prevent more misconduct. The problem we have is that complaints are increasing. The majority are not sustained. There have been a few submissions come to us on this particular issue. It seems to me that a lot of councillors are fairly politically experienced in this day and age and in many instances use this as a means of stirring up a storm and perhaps gaining a profile. My question is: is there anything that we can do to reassess the initiative of talking with councillors, because it seems the more informed they become the more complaints we get? Has any councillor or council officer been investigated for vexatious or frivolous complaints?

Mr Needham: I will deal with the second part of that first. Certainly in the 18 months that I have been there, the answer is no. I was a little bit surprised at the various comments that have been made in these submissions. Unfortunately I was not able to be there on the day, but Mr Lambrides and Ms Couper, our director of complaints services, have had discussions with Mr Greg Hallam of the Local Government Association, and even before that we had written to the Local Government Association asking it if it could assist us by asking its constituent local governments to think back to any complaints which they felt came

within that category of vexatious and frivolous and refer them to us so that we can look at them and perhaps talk about those particular specifics—rather than talking in the general, talk about the specific. I understand Mr Hallam is quite keen on that idea of engaging in a dialogue so that we all understand where each of us is coming from. But we have not received those yet.

If we investigate a matter and find that it is unsubstantiated, then in every case our officers know that they have to look at whether the complaint comes within the frivolous and vexatious category and as to whether action should be taken with regard to it. It is now part of the closing of the investigation mechanism that they have to go through that and there is a particular part that they have to fill in to show that they have specifically addressed that issue. It is not something we ignore. It does not come up. There is a difference between frivolous and vexatious and complaints that cannot be substantiated. I might be wrong, but I feel that people are saying if a complaint is unsubstantiated in their view it is frivolous or vexatious. That is not our view. There are complaints that we receive that turn out to have no basis, but one can generally see why the person thought that it warranted referral to us.

In fact, I made a comment in the Gold Coast City Council report about how some of these complaints might not be received if local government were more careful in advising people why they are doing particular things. I was quite surprised to see that local governments will make a decision in council contrary to recommendations of officers but will make absolutely no record of why. We made the recommendation that they should have to. I have seen comments come back saying, 'That is too difficult. We cannot do that'. With respect, it is not. A public servant can be required under the Freedom of Information Act to give a statement of reasons for a decision. Why should a council not give a statement of reasons as to why it is differing from the opinion held by its professional officers? It does not have to be a two-page statement; it can be dot points. That is all it has to be. It does not have to be a huge thing. People are entitled to know why a decision has been made a particular way. There is a danger if they do not know but, for example, they do know that one of the members who is arguing strongly for it received a donation from someone who might look as if they were connected with the applicant or the person connected with the decision. Of course they are going to form a suspicion in their own mind that there might be something funny. You cannot blame them then if they refer that to us.

If we go in and find that there was, in fact, very good reason, then we find that is unsubstantiated. But we are not going to prosecute those people for a frivolous and vexatious complaint. In our report back to the council we would normally point out to it that if it had done the appropriate thing and set out the reason for the change in view—and the councillors are entitled to differ, of course, from the officers—it might never have received that complaint.

That is not to say there are not frivolous and vexatious complaints that we are aware of, particularly in the lead-up to a local government election. It is unfortunate that politicians and would-be politicians use us as a means of trying to harm their political opponents, but that is life. I do intend to do the same as my predecessor did before the last local government election and go out publicly asking people not to do that. We have discussed that with the Local Government Association and we intend to do that in conjunction with the Local Government Association. They have offered to convey that message on their web site as well and to convey it out to their constituent local government members. So we can only try to ask people to behave themselves. But that is really what it comes back to: asking people to behave themselves, to stop using us as a weapon to beat their opponents around their heads.

Mr HOBBS: One of the submissions talks about the document you use with councillors to explain the role of the CMC, which is called *Facing the Facts*. They say that the reporting requirements of the legislation are in need of urgent review, and that currently agencies are required to report based on a mere suspicion and that that is too low. They recommend that the threshold for reporting be based on at least a reasonable suspicion as an attempt to discourage frivolous complaints. Is there room to have a look at that?

Mr Needham: That is the matter that arose with Mr English earlier about the definitions that are in the act at the moment. My answer then was that, no, I do not think that should be changed. It is specifically done by the legislature; parliament has done it that way—presumably put forward by government, but it has been accepted that way—to set the threshold fairly low. If it were to be on a reasonable suspicion, then that would mean that, if a complaint is made about someone who is perhaps a mate of the CEO's within the council, be it a councillor or an officer, it would then be up to that CEO as to whether he holds a reasonable suspicion such that he should refer it to the CMC. With respect, that would not be a good way. Then we would have complaints about that person not dealing with complaints in a satisfactory way. He should refer it to us.

We are putting in place these section 40 directions that you have known about for a fair while, which are being modified for those agencies that had them before and rolled out across all departments. They are going out to the QPS as well and they are going to go out to all local governments. We are working with the Local Government Association on that. That will enable them in those smaller matters to immediately start to deal with it themselves and just refer it to us by way of a schedule. So that will stop some of the problems that we acknowledge are there now. So if there is a minor matter that really needs to be dealt with as a managerial matter, they can get in and deal with that immediately.

But getting back to the basic thrust of your question: no, I do not think it should be changed. If it were left to the discretion of the mayor or the CEO for them to refer it to us if they hold a reasonable suspicion, I think that would be a recipe for problems that could arise.

Mrs LIZ CUNNINGHAM: I want to change the subject if I could. Whilst I recognise that whistleblower legislation is not in your jurisdiction directly, information from whistleblowers does flow over into the CMC's jurisdiction for investigation in a number of instances. In your experience, how effectively do you see the whistleblower legislation working?

Mr Needham: It is funny: we have complaints by whistleblowers on a regular basis, but most of them you would never hear about, most of them are not in the public domain, and most of those people would never even think of themselves as whistleblowers. Every time we have a complaint that emanates from a more junior public servant about a more senior public servant, I would not automatically class them in the whistleblower category, but anyone complaining about someone of a similar rank to them or slightly below or above is a whistleblower. We have them all the time and they go through no problems at all.

There are certain ones that gain a lot of notoriety. Some of those people can be dealt with in an inappropriate way and that cannot be condoned and must be stopped. In others, unfortunately, there is the circumstance where a person makes themselves a whistleblower because they are already the subject of disciplinary action or whatever. There are cases like that which cannot be hidden and should not be shrugged from, and we have to be aware of the fact that there are some people who claim to be whistleblowers for their own benefit. That makes it very awkward to deal with whistleblowers because there are proper and good whistleblowers who go through without any problems, there are proper and good whistleblowers who do suffer problems and there are people who make themselves whistleblowers for their own purposes.

The first category that have no problems are easy to deal with; those other two categories are the difficult ones. If we see it, we will always investigate any suggestion of any reprisal that is made about a whistleblower. That is something that comes directly within our jurisdiction. If it is the other aspect of just generally how they are dealt with, you are right: that normally does not come within our jurisdiction. I understand you are hearing from the Ombudsman, Mr Bevan, who has certain views in that regard, and we have no difficulty at all with his views. We see that there could be benefit in what he suggests.

There are a couple of things that are mentioned in our report, if I can touch on them briefly. There is a review that is under way which arose out of the last three-year review by this committee into the whistleblower legislation and how it is working. That is, as I said, underway but that is a matter going to cabinet so I cannot speak about the details of that. We are only involved with that on the periphery as someone to be consulted. It is being done by the office of Mr O'Farrell, the Public Service Commissioner.

Secondly, and you would be aware of this from our reporting, there is an Australia-wide research project which is well underway at the moment called Whistling While They Work. We are a partner in that, both by monetary contribution and by in kind work from our own officers, but it has been mainly done out of the Griffith University, with partner agencies with most ombudsmen in Australia and other anticorruption bodies. As I said, that is well underway; it is a project that will go over several years.

We have been very heartened by the responses of the departments in Queensland who were asked to take part in surveys, and Ms Johnson can speak about this in more detail. To my understanding, they have done that without raising any problems at all. They have done everything that has been asked of them. Some departments were asked if they would be prepared to volunteer to go further and have researchers in there doing an in-depth look at how they deal with whistleblowers, which of course can be beneficial to them in that they can then get, in effect, an outside consultant reviewing their systems and giving them guidance on how to improve them. One would think that some departments might not like the idea of someone having an in-depth look at their reporting on how they were performing, but we have seen a very good response from departments prepared to say, 'Yes, we would be prepared to take part in that.' So that has been heartening, but more detail can be given to you by Ms Johnson about that.

Mr CHOI: Sections 216 and 217 of the CMC Act deal with frivolous or vexatious complaints and false and misleading statements respectively. There has been some suggestion in some of the submissions that the CMC is seen to be reluctant to initiate proceedings against people if their complaints are frivolous or vexatious. Do you have any opinion on those comments? Do you think it is because the CMC does not want to discourage people from lodging a complaint, or is it because the prosecuting regime has not given you sufficient information to successfully prosecute people? That is the first question.

The second question is: when the CMC decides there is not enough evidence to prosecute anyone or finds there are no grounds for complaint, some of those putting in submissions think the CMC's responses are, in their opinion, too negative because they say there is insufficient evidence to carry on a further investigation. They believe there is evidence and therefore there should be a case to answer. Can you comment on those?

Mr Needham: In relation to the first one, sections 216 and 217 are the two sections dealing with false or misleading statements made to us and with frivolous or vexatious complaints. It is my understanding that the CJC/CMC has in the past prosecuted for frivolous and vexatious complaints made to it. Not since I have been with the commission have we instituted any such prosecution. I cannot give you the details of how many or anything of that nature. Mr Lambrides, who has much longer corporate knowledge than I have, may be able to assist you in that regard.

But, as I said in the previous answer, it is a matter that our officers are required to actually address in every complaint that we investigate. Vis-a-vis complaints we do not investigate, we can only look at that if the agency comes back to us and asks us to do it. In the 18 months I have been there, to my knowledge—and I would be very surprised if it was not brought to my attention—no agency has come to us, and this includes local governments, and said, 'We have now investigated this matter you have referred back to us and we are of the view from our investigation that it was a frivolous or vexatious complaint. We ask you to look at it and take the appropriate action.' No-one has ever done that so, unless we fortuitously through our review process see it, we cannot start that process ourselves because we do not know about it. That tends to suggest to me that none of them thought too seriously that the situation warranted a prosecution or I would have expected they would have come back to us.

So that is the first thing, and I have spoken about how we have written to the Local Government Association asking for assistance for them now to refer them to us, if they have any. We might be out of time but at least we can learn from it by a dialogue between us as to where we should go in the future.

The second one is section 216, which is the false and misleading statements made to us. There are two aspects of that. There is the aspect of making it in a complaint to us and the aspect of making it when giving information to us that they have been asked for. In the latter of those aspects, you would be aware that we have in fact commenced two prosecutions with respect to that arising out of the Gold Coast matter.

I understand, and I might stand corrected on this, that they are the first prosecutions that have been instituted. In my view, if people provide false or misleading information to us knowingly, we should utilise that prosecution power. It is not appropriate for people to provide false or misleading information to us, whether it be by way of a complaint or in answer to a request for information that we make during the investigation. Either way, my view is that, if that is done, that is something that should be prosecuted in appropriate cases. If we allow people to make false and misleading statements to us without prosecuting, we are in effect saying to them, 'You can say whatever you like to us. Lie about it, mislead us and you will get away with it.' We cannot have that because that can affect the investigations that we carry out, and it can affect the subject officers of those investigations. So my policy in the future—and the commissioner certainly backed us in respect of commencing those two prosecutions, so I think I can say it is a commission policy—is that in appropriate cases we will prosecute.

The other aspect of our clearances after investigations being too negative, I am aware of those submissions that you are referring to. That is a matter we do deliberately. In some matters we will actually find that the complaint is unsubstantiated. In other matters we will do it on the basis that the evidence does not support the complaint. We will do it in a more positive way or in a less positive way. That is done deliberately. One particular one that is in the submission is there was a suggestion that we were not positive enough. That was done very deliberately. In that same one we made comments about failings in systems within that particular organisation.

One of the particular subject officers made the comment that he was not very good with paperwork. For the particular officer to be making that statement is really quite outrageous. If we cannot support an allegation because the paperwork is not kept at that office that person is required to keep within the organisation, then we are not going to say that the charge is found to be unproven because we cannot say that. In fact, if the proper paperwork had been there, it might have been the situation that the charge would have been unproven or it might have been the situation that the charge, in fact, could be proven. We are not going to give the positive assertion in those circumstances when we are unable to.

It is like a jury verdict in Australia. A verdict of not guilty means that the prosecution have not proven the case beyond reasonable doubt. I understand that in Scotland they have another verdict which takes it further to positively not guilty as against an unproven. We look at it in that way and, where appropriate, we will come out with the more positive statement, but in other cases, where we cannot, then we give the less positive statement about it.

CHAIR: Just on that point, is there anything written down within the CMC, and potentially available for the public to read and even for the committee to read, that helps them understand the way in which you arrive at slightly different conclusions at the end of an investigation which you have chosen not to proceed with because there is not sufficient material to proceed with? Then there are the different alternative conclusions you reach. I think one of the problems may be that people just do not understand what is meant by some of the language.

It perhaps would not be an easy thing to draft, but presumably within the CMC itself you strive for consistency of outcome across like matters. In the absence of some internal protocol that identified the terminology appropriate to adopt for the conclusion of particular investigations, there is a real risk of confusion, and people in the community are getting mixed messages.

Mr Needham: To my knowledge the answer is, no, it is not written down. If it is, it has not come to my attention. Secondly, I do not see it as a difficult issue.

CHAIR: With respect, I can tell you, from the complaints we get to us, the consumer sees it as a very difficult and contentious issue. There is one case I know in particular where the CMC said that it was not proceeding with the investigation but that it did not mean to say that the person whose statement was the content of the complaint was not lying. It left, I can tell you, some confusion.

Mr Needham: Yes. That is a slightly different issue. I can understand where you are coming from. That is one where, and it would be worded slightly differently—I cannot think of the wording that is used—it is indicating that we are not investigating it, but we are not saying that in making the complaint that it was an unwarranted complaint. That is, in effect, I think the message that is trying to be got across there.

CHAIR: In the matter I am referring to, to put things beyond doubt, the person who drew this to the attention of the commission then gave a complete version—their version—of events and sent it back to the CMC so that at least that was on the file. When the two were read together, you could not help reaching the conclusion that the person was lying.

Mr Needham: I cannot comment on that individual one. I would need to see it before I could comment on it. Going back to the issue at the conclusion of an investigation, because that is one where there was no investigation, to my knowledge there is no written document. I hear what you say, that there is perhaps the need for us to do it, and that will be noted and we will look at that. I see no reason why it cannot be done.

There was one other part I was going to say. I normally note them as I go. I think I have lost one particular thing I was going to say along the way there.

CHAIR: Feel free to come back to it.

Mr ENGLISH: Mr Needham, one of the possibilities with devolution is a lack of consistent decision making and penalty application across multiple UPAs. Is there a database that UPAs can access to try to achieve a more standardised penalty outcome? I am certainly aware, again personally, of one incident where there were people from multiple UPAs involved in alleged incidents. Some incidents were found to be unsubstantiated and against some people from other UPAs the complaint was substantiated, but they were all there at the one time doing the same thing, so there was an inconsistent outcome on that occasion. I do not want to revisit that, but a database would assist the decision makers in UPAs and give them some guidance in what type of penalties or decisions to make. Is there one?

Mr Needham: There are two aspects there. You appear to be talking about investigative outcomes as to substantiated or unsubstantiated. That is one part, and then the penalty or the sanction that is applied is a separate one. In the investigative outcomes, the guide that is there for that is that very substantial guide that is referred to in a number of the submissions of facing the facts which gives very detailed guidance to UPAs as to how investigations should be carried out. I cannot comment on that individual circumstance, but it is possible that if similar sorts of allegations were made across two departments there could be different outcomes because the circumstances within the departments might be different. I would need to look at that. I could not comment on that particular instance.

Mr ENGLISH: That is reasonable.

Mr Needham: But there is very detailed guidance given, in facing the facts, as to the appropriate and the proper way to carry out an investigation which should lead to similar results being achieved.

Vis-a-vis penalty outcomes, I know of no database across all various UPAs. In fact, I know of no database within most UPAs. I do know that within the QPA I see it where the assistant commissioner who will be dealing with the matter, say, will refer to the fact that he has taken into account similar precedents. They are aware, of course, of decisions which, unfortunately, generally, from our point of view, are not good precedents from the official misconduct tribunal, and they have to look at that. If there has been a decision of an official misconduct tribunal about what penalty, say, should be applied to an officer who was caught drink driving whilst off duty, then the assistant commissioner, of course, is going to take into account that penalty in applying the sanction in the particular matter before him.

Within the QPS, I am aware that they do look at the parity of sanctions. I am not aware of it within other UPAs because generally other UPAs do not deal with disciplinary matters to quite the same frequency as happens within the Queensland Police Service, as you would understand. In a service of that nature you get more complaints.

Mr ENGLISH: Given the increase in devolution and the increasing role that UPAs will be playing in that, is it something that the CMC should be considering leading with?

Mr Needham: I cannot answer that, Mr English. Mr Lambrides might be able to help. What one would need to know is whether, within a particular UPA or across differing ones, there are a sufficient number of sufficiently similar matters coming up to be dealt with. If there are, then that could call for the assistance of the database to ensure what is called judicial quality in sentencing—the parity of penalties and/or sanctions—applied. I cannot answer that question as to whether that is so. I do not know whether Mr Lambrides can.

CHAIR: Just pausing there, I just wonder whether, again for efficiency purposes, Mr Lambrides or Mr Callanan would like to respond to that question now rather than waiting till later.

Mr Lambrides: Thank you. In relation to the Queensland Police Service, they do not have a formal database. As the chairman said, they do have access to precedents. There is a physical request made by the region to the ESC and the ESC then assign an officer to look for a particular precedent. So it is very much a manual, unsophisticated method. I discussed this week, with the assistant commissioner at ESC, the necessity for there to be a database which can be accessed throughout the Police Service to ensure equity and parity.

In relation to the public sector, the only decisions that are generally available are those of the OPSME, but that is normally where a grievance has been taken to the OPSME, so there is no general database. One of the problems, as Mr Needham indicated, is there are not that many matters which end up in disciplinary action in the public sector where the information has gone beyond that particular agency. I think you will find that most of them will be most reluctant to be providing details into a general database, especially when each agency is completely different and have different considerations. I think the utility will be limited, if I can answer it that way.

Mr ENGLISH: I am surprised at that answer given that there are 4,000 complaints a year, four per cent of which are investigated by you, so 96 per cent are going back to the UPAs. Of those 96 per cent, a lot are going to be unsubstantiated, I take that on board, so I understand we are talking about a small percentage. But your argument also can be used to argue the increased need for a database because a particular UPA might only have one offence every two years, so they have no idea what penalty to apply, but another agency might have had 10 similar ones in the last month and they will not know what that other UPA is handing out for those types of offences. The argument can be mounted that they need the database to provide them better clarity and better guidance.

Mr Lambrides: My view—my personal view—is there is not much utility comparing between agencies. That is my personal view.

CHAIR: If you went back to taws and you had this arrangement that never really existed but a lot of people thought existed, that every complaint of official misconduct that went to the CMC and previously the CJC was investigated by the CJC, now the CMC, if you were doing them all—and I accept that you never actually do them all but you were doing a lot more than what you now do—by them mostly being done by the one organisation, being the CMC or the CJC, there was the opportunity within the one organisation to maximise consistency. The value of consistency is fairness in penalty recommendations or any sort of recommendation.

Mr Lambrides: With the greatest of respect, we never make a recommendation in relation to a penalty. We make a recommendation in relation to charges. We never—even when we investigated the majority of matters in the early nineties—made a recommendation in relation to penalty. That was always left for the agency to determine.

CHAIR: And that is where it remains?

Mr Lambrides: Yes. Of course, with the Queensland Police Service we do on occasions appeal their disciplinary decisions to the Misconduct Tribunal because they are under an obligation to refer each of their disciplinary decisions to us to review. We do every now and again think that the penalty imposed is not within the range and therefore we recommend an appeal to the Misconduct Tribunal. We go to the commission, the commission almost invariably agrees and we appeal to the Misconduct Tribunal.

Mr Needham: Can I say this: it is a matter I can raise with Mr O'Farrell, the Public Service Commissioner. Bear in mind there can be disciplinary matters that arise out of investigations that have never come to us, because it is only those matters where it may warrant dismissal theoretically that come to us. There are other lesser matters that are dealt with as disciplinary matters within the departments that we know nothing about. If there is the need for a repository—a database—the organisation to hold it would perhaps best be the Public Service Commissioner in the Office of Public Service Merit and Equity. I will raise the matter with Mr O'Farrell and discuss it with him. He would have some idea of the number of other disciplinary matters that have never come to us that there are and whether it would be of any assistance and take it on from there.

With regard to the difficulty as I would see it, even if you talk about things like the releasing of information, releasing of information from within the QPS is different from but perhaps not so different from releasing of information from within the department of transport about drivers licences. But it is a bit different from whether someone within DNR&M releases details of someone's water licence for extracting of water from the river or something of that sort of nature. It is not that same sort of confidentiality, personal information—

Mr ENGLISH: Unless they are your details!

Mr Needham: It is the sort of thing that would be dealt with differently within the organisation. It would depend upon the particular policies and procedures in the organisation. You would not necessarily expect parity from one to another in those circumstances. But that could all be looked at, so I will raise it with Mr O'Farrell.

Mrs LIZ CUNNINGHAM: I want to move to paedophilia for a moment. You said in your report to us you covered two major areas—recidivism and offences using the internet. Further in your report you talked about the fact that the act gives the CMC the power to use data surveillance devices of a kind that would be invaluable in paedophilia investigations. Then you go on to say that their use is limited by a lack of TI powers. Firstly, what issues are emerging in terms of challenges to you, the CMC, in investigating paedophilia? How often have you used the current powers that you do have in terms of data surveillances to investigate paedophilia?

Mr Needham: With regard to the data surveillance devices, there has been some disagreement—uncertainty—with respect to those since the time when the ability to utilise those was inserted in our legislation. There was doubt as to whether their use constituted a telephone intercept. There were differing opinions expressed. There were some quite strong opinions expressed that in fact they did constitute a

telephone intercept. In those circumstances, where there is that significant doubt we would not use them because we are not prepared to do something that might be illegal. However, the situation on those is becoming clearer. There have been some amendments to the TI legislation federally with respect to stored communications that have been brought in in the last six months or so. It is felt that they have clarified the position to the stage where we are now of the view that there is a very strong and supportable argument that the use of data surveillance devices does not constitute a telephone intercept.

I have spoken with officers of the federal Attorney-General's Department and discussed it with them. Perhaps as an excess of caution, because we are not an organisation that wants to do anything that is beyond the law in any way, I have in fact written to the federal Attorney-General's office putting in writing our understanding of what the situation is and seeking their clarification. If the clarification comes back the way I expect it will, then we will be prepared to start to utilise data surveillance devices. But I think the approach that we take of caution would be one that the committee would support. It would of course be most disadvantageous to the CMC to have a court rule that what we had done was illegal, and I would not be prepared to run that risk. I would want to know. But if I get clarification, especially in writing, from the federal Attorney-General's office and if our strong view is that what we are doing is within the law, then we will be prepared to use that. With respect to the limitations on peer-to-peer material within the internet, I will ask Mr Callanan to answer that. His knowledge in this area is much more detailed and better than mine.

Mr Callanan: My technical knowledge is not. Perhaps just to clarify what our areas of interest are in paedophilia, Mrs Cunningham referred to recidivist offenders. That is one aspect of the Artemis umbrella referral. It relates to recidivist, extrafamilial and networked offenders, and it is in relation to networked offenders of course that data surveillance devices are highly desirable. As Mr Needham mentioned, our view of the law was that the use of those was limited, and it was limited in this way: it was a telephone interception, or thought to be, to intercept communications between people on the net and emails and that sort of thing. We have always thought we had the capacity to put data surveillance devices into stand-alone computers—that is, those not connected to the net—but realistically that is not what we are about and we have never had the occasion to do that.

The emerging issues are the emerging technology issues. The communications facilities available are burgeoning. When we started, it was basically the so-called chat rooms. Nowadays there is the peer-to-peer groups. There are a number of other chat facilities becoming available on the net. An emerging issue are the so-called blogs—the web logs where quite young children can set up their own web page. That is almost an invitation to the paedophiles who are out there looking for just that sort of thing.

We are reasonably confident we are up with the game. Three of our Egret team officers—the three police, a senior sergeant and two sergeants—have just returned from a two-week stint in the United States where they actually worked with the San Jose police. They attended a conference sponsored by the FBI and Microsoft and they spent some time with the ICAC over there, the Internet Crimes Against Children investigative body. They have come back with two or three different kinds of software which will assist us in getting into these new chat media. Those police are actually presenting to our Crime Operations Review Committee next meeting. It does seem fairly promising, but it is a bit like the tax laws: as soon as we get on top of that, technology will move ahead and the paedophiles will find some more cunning way to get around those things.

Mr COPELAND: Just following on from that question—and this is to either Mr Needham or Mr Callanan—the committee has said in the past that the work you have done on paedophilia has been really, really excellent. On page 30 in Operation Verona you go through some of the achievements regarding paedophilia. I am looking at some of the imprisonment terms and the penalties that people have got overseas from the work that you have done, and they are much bigger penalties than what has happened here. In your view—and you may or may not be willing to express it, I guess—do you think we need to strengthen up the penalties that are available in the Queensland courts for these sorts of crimes?

Mr Callanan: You only need to look at the offences that are set out at the bottom of page 30 and perhaps on the top of page 31. These were very serious offences. The first degree sodomy, as I understand it, was a child under 10—a boy under 10. In Australia people simply are not sentenced cumulatively to a total of 117 years imprisonment. The Irish fellow had been before the courts on a number of occasions in the past, for example. It is like any approach to sentencing—it really needs to be, subject to precedent, looked at on a case-by-case basis. The Queensland penalties for the range of paedophile offences that are included in the Criminal Code provide an adequate range, as it were, within which the courts can deal with most of the offenders we come across.

CHAIR: While Mr Callanan is at the table I want to ask a question of you, Mr Needham, and Mr Callanan if he wishes to respond as well. In relation to the PIM and surveillance devices, which we talked about earlier, are there any changes that you would think would be helpful to the PIM arrangements that would improve accountability or alternatively improve the effectiveness of the commission in the way you seek to use surveillance devices?

Mr Callanan: There are in fact a number of changes which have recently occurred with the passing of the new cross-border legislation. It directly affects crime. It does not have such a great impact in the misconduct area, but for example there is now a higher level back-end accountability in relation to surveillance devices and the like. If I can explain a little more in relation to some of the issues that were canvassed earlier, because I think it gives a reasonable indication of the way things work in practice as opposed to perhaps the black-letter law.

As Mr Needham said, the PIM is always consulted before we go to court. There are a whole range of things that are almost standard as a result of ongoing contact between us, the QPS and the Public Interest Monitor. Where there are one-off concerns on the part of the PIM, they tend, again, to be negotiated. It is a pretty rare thing for us to be in court arguing before the judge with the PIM taking an opposite view. Special conditions do exist. For example, suppose we are putting a device in some person's relative's place. There might be a condition that it is only when that person is present that the device is to be monitored, and that kind of thing again is negotiated.

You posed the question of whether the PIM has ever been obstructive. There is only one occasion of which I am aware. That was a situation in which there was an inadvertent breach of the terms or the conditions of a warrant very soon after the warrant was issued by the judge. We became aware of it. We alerted the PIM to it. We considered the breach so fundamental that we should invite the judge, as it were, to withdraw that warrant and we made a fresh application. The PIM opposed it and the court accepted the viewpoint of the PIM and we did not get that warrant.

CHAIR: Which is how the system is supposed to work.

Mr Callanan: I think so. The PIM, I can assure the committee, is very independently minded about these things. It is not at all beholden to either us or the QPS. The dynamics tend to be worked through in that negotiation process. Generally, our view is that we concede most things where the PIM thinks it is important enough to actually raise it before the judge. Some issues, as I have mentioned, are argued out before the judge.

Mrs Cunningham raised the issue of compliance and auditing, and what Mr Needham says is correct. At the end of the life of a warrant a compliance affidavit is provided to the PIM. It is then up to the PIM if any issue of concern is identified by him and he can require us to go back to the court. On top of that, the standing operational procedures for all of these things is that the inspector of police, who is the original applicant, monitors the activity in relation to the surveillance devices throughout the life of the warrant. That is why, for example, if something untoward does occur—and one instance comes to mind; I will not go into detail but the video and audio device picked up some intimate behaviour. Generally, we take the view that that may be an unacceptable intrusion on people's privacy. That came to the attention of the inspector because it is a matter of ongoing monitoring of the logs for compliance. We referred it to the PIM. The PIM did not have an issue with it given all the circumstances and that warrant continued, but the PIM may well have said, 'We need to tell the court about this. The judge might take a serious view of it.'

Those are the kinds of things that are happening in practice which I do not think need, as it were, to be legislated. In fact, I think it is unnecessary to legislate and to legislate it might discourage the openness that there is at the moment because everyone would feel, 'We have to do this and we have to do that et cetera,' and there would be that lack of discussion and talking things through.

CHAIR: Maybe—and I would think it is the case—the good systems and practices that have now been developed have been developed because we have in legislation a Public Interest Monitor. In the absence of the Public Interest Monitor perhaps there would not be the voluntary assumption by QPS or the CMC of the practices that you now undertake.

Mr Callanan: I certainly agree with that. These things are meant to facilitate that accountability process, and that is why they are put there.

Sitting suspended from 12.32 pm to 1.48 pm

CHAIR: Mr Needham, in this morning's session you spoke about the protocol that has been developed between the CMC and the DPP on the handling of matters that they are both involved in and the issue of who charges. Is that protocol operating now?

Mr Needham: Yes, it is. It was only formalised in writing between us really in the last month. So it is operating but there has not yet been occasion to put it in place. Formally it is operating.

CHAIR: As you all know, a key issue out of which that arose was ventilated in the last three-year review. I think it was our understanding that it was possibly a significant impediment to timeliness, and we were quite anxious about the timeliness matter altogether. Why has it taken two to 2½ years for the protocol to be concluded or have things been happening in an improved way administratively even in advance of the protocol?

Mr Lambrides: Maybe I can assist, bearing in mind I was present at the last review. At that time I had just commenced discussions with the AC of the ESC with a view to providing briefs to the QPS rather than the DPP, thereby hoping to truncate the time taken. So for a number of briefs we sent them off to the Queensland Police Service to consider rather than the DPP. We tried that for quite a while. I think it is fair to say that it was not successful, so we abandoned that and then pursued a protocol with the DPP.

CHAIR: In relation to telephone interception, I see that it is one of a number of proposals that the CMC puts back to us and you have reminded us of the history of that issue in the last probably three to six years. In fact, I think TI gets about 10 separate mentions in different parts of the document. We have not missed the impression you are wanting to leave us with that it is a matter of some preoccupation of the commission at the moment. Bearing in mind what has been said about the PIM and its role, I am wondering why there appears to be no advocacy in your submission for accountability mechanisms with telephone interception. There seems to be nothing in the submission that advocates the adoption of either the PIM or some alternative accountability mechanism to address the concerns that were raised by this committee at the last three-year review about the inadequacy of accountability with telephone interception.

Mr Needham: As I said before—perhaps we omitted putting it in here—the CMC has always been accepting of the idea of the accountability of the PIM both pre-situation and any form of accountability after, which is what is envisaged in the federal legislation. We are quite happy to accept that. It is then a matter for government—federal and state—as to whether that is going to be able to be done. It is a matter that I have had some discussion about in attempting to see whether we can get some form of compromise. I would prefer not to go into all of those details publicly at this stage. I think it would be disadvantageous to be publicly ventilating at this stage.

CHAIR: Can I then go to an unrelated area and that is chapter 10 on accountability and corporate governance. I want to ask you, Mr Needham, about the issue of the part-time commissioners. One or two submissions raised the question of the role of the part-time commissioners. We do know a number of things that the part-time commissioners are involved in, so I am not asking about what they presently do. I am wondering whether you as chair have any suggestions about additional activities in which the commissioners could be involved or resourcing or support that could be provided to the commissioners to overcome the unavoidable disadvantages that anyone fulfilling a part-time role has compared to those engaged full-time in the activities of the organisation?

Mr Needham: I would not suggest that they become more than part-time because it would take away from what I said at the end of my comments this morning. I see it as an advantage to have [part-time people who are not involved in the day-to-day pressures that those of us who work [full-time within the organisation are.

CHAIR: Perhaps my question was misleading. I am not suggesting that they should become other than part-time. I am wondering what could be done by way of resources or support to better equip part-time commissioners in the role that they play that would help them to overcome the disadvantages that naturally flow from the fact that they are involved part-time in an organisation compared to those who are involved full-time in an organisation.

Mr Needham: I have difficulty thinking what could be done. One of the obvious problems with respect to the commissioner that we are missing at the moment, the legal commissioner, is that the requirement under the act is that that be a person who is involved in full-time legal practice or still involved in active legal practice. As I understand it, that is one of the difficulties that has been encountered in replacing our legal commissioner. Of course anyone who is involved in active legal practice—generally they are at the bar, in their own practice or part of a solicitor's firm—does not have the time to be able to effectively carry out their role as a part-time commissioner.

As I think the committee is aware, we do work our part-time commissioners. They do not get their money for nothing. As I understand it, they are paid on the basis of three days a fortnight but paid at the Public Service sort of rates for members of committees. What they will have earnt in those three days is not going to replace the amount of money that they would earn in active practice as a barrister or a good solicitor out there in private practice. Plus, if they are at the bar and to a lesser extent if they are a solicitor, having set commitments as we have with the commissioners of meeting every fortnight—other meetings can be more flexible and be staggered around their other activities—becomes very difficult when operating at the bar.

I can remember years ago talking to one of the very first commissioners with the CJC about how he was finding it. He told me then—and this is now 15 years ago—that it was very, very difficult because it meant that you could not set down a trial that could possibly run over that time. So I have mentioned to both the Premier and the Attorney that that is something that might have to be looked at in the future as to whether it should be altered so that a legal commissioner could be someone who has perhaps just left active practice and is quite happy to then be engaged part-time and is really putting something back into the community by giving their services to the CMC. That is one change that perhaps in time might have to come in. Hopefully we will get a commissioner this time, but perhaps next time it might not be able to be done without that sort of change. I do not know whether that is going anywhere at the moment. That is something this committee might want to think about.

With respect to the others, if they need secretarial or other services, those sorts of things are provided to them already within the commission. They have their—albeit fairly small and cramped—own work spaces within the commission where they have their own computer access et cetera. I cannot think of any other physical resources that we could offer to them.

CHAIR: Is there a secretariat or a person who is particularly dedicated to the service or support of the part-time commissioners?

Mr Needham: Not totally dedicated, because there has not been a need to have someone who is 100 per cent dedicated to that. However, there are people in the corporate support area, in effect the secretariat of the commission through Mr Hummerston, who are always available to do any typing or anything of that nature that they want. Our librarian does work for them in chasing up research and those sorts of things. All of the services that are readily available to any officer within the commission are available to those commissioners.

Mr HOBBS: I am interested in the Department of Health submission, which you have probably seen. Its Ethical Standards Unit has observed an increase in the number of anonymous telephone complaints received by the CMC and that often those complaints are recorded by officers who do not

always have expertise in issues relating to health. Basically, they are asking the Parliamentary Crime and Misconduct Committee to review the qualifications and experience of staff receiving such telephone complaints. Do you think that your staff who receive those complaints are qualified? Do you think that Queensland Health is being a bit sensitive?

Mr Needham: Certainly they are not qualified in medical matters and they are not going to be. As I understand it, that mainly arose during the time of the Bundaberg inquiry. Always when you have a public inquiry, a whole lot more people will ring you, write to you or whatever. As I understand it, a lot of people rang in who were not so much wanting to put in a complaint but who were giving details about some particular instance, and they were doing it anonymously. In many cases those matters did not warrant investigation. In most cases they were forwarded to the department because the department should be aware of them. They were not being forwarded to the department with a direction that the department go and investigate them.

They are complaints from people who do not have medical knowledge and they are being taken by people who have no medical knowledge so, yes, they are not going to be specific. Normally they would be the sort of thing that is not within our jurisdiction. We really just pass them on to the Health Department for its information as part of any systemic aspects that should be looked at. As I understand it, any relevant ones in that same vein were passed on to the inquiries that were underway.

It is a problem. I note that the Local Government Association said something similar about the experience of our officers. We cannot expect our complaints officers who take phone calls to be totally knowledgeable in every area. We try to make them have some sort of knowledge. We are introducing a system whereby complaints officers will deal mainly with complaints from a certain group of agencies, so they will build up more expertise in particular agencies. That is one way we can do it.

In our prevention area we need specific expertise, for example, in local government. In those sorts of areas we need particular expertise and we acknowledge that. We have discussed it with the Local Government Association. We have advertised twice for a prevention officer to work specifically within the local government area. Neither time were we able to fill the position. The second time, we upgraded the level of the position to try to attract a higher calibre of candidate and we were unsuccessful in getting anyone. With the Local Government Association, we are looking at seconding officers from the association who will work with us for a period, so we can bring that expertise in. Hopefully, it will be passed on to our officers who will be working side by side with them during that time. We are looking at alternate ways of trying to get expertise, but it is an ongoing problem.

Mr HOBBS: The submission goes on to say 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 Crime and Misconduct Act 2001. Specifically, there appear to be many issues now being assessed as suspected official misconduct which would likely not have been assessed in that manner in the past. Do you think there has been a reduction in relation to that? A while ago your answer was that you did not think so.

Mr Needham: No, there has not been. I suspect that they are starting to realise that some matters have to be referred to us that previously they did not think had to be. Generally, things within HR and the like do not have to be reported to us. Only at the very extreme end would HR matters fall within the level of official misconduct that had to be reported to us. Those issues are being taken up with the department to sort out those misunderstandings.

There are a couple of things in their submission that we do not fully agree with and we are taking that up with the department. The suggestion that now virtually any issue of clinical malpractice has to be referred to us is an issue that I thought they understood. Helen Couper and I met with Ms Uschi Schreiber, the Director-General. We discussed that issue and I thought it was understood. Perhaps it is not understood at the lower level of liaison people who deal with us. We will make sure that it is.

Most issues of clinical malpractice do not have to come to us. If a doctor did not wash his hands before surgery, that would not have to come to us. However, if over a period that doctor had been given official directions et cetera, had flouted those directions and had continued to put his patients at risk by refusing to wash his hands, that could become official misconduct or conduct warranting dismissal. Once it gets to that stage, it has to come to us. One would hope it would be dealt with managerially within the Queensland Health system before it ever escalated to the stage that it is so bad that it has to come to us.

Mr HOBBS: I note that the Ethical Standards Unit has been advised that Dr John Youngman, the Chairman of the Health Quality and Complaints Commission, met with the CMC to discuss how the commission and the CMC should interact in the future. Maybe something will come out of that that you will be able to work your way through.

Mr Needham: A protocol is being put in place between Queensland Health, the new Health Quality and Complaints Commission and us as to how those matters are dealt with. In the future, all issues of clinical malpractice will be dealt with by that commission. Even if it gets to the gross negligence stage where it becomes a matter of official misconduct, generally it would go to them and the QPS. At that stage it is in the Dr Patel category and, as you would be aware, it is criminal negligence and an offence under the Criminal Code.

CHAIR: I wish to check a detail whilst I think of it: at some point will the commission be providing us with a written response to any of the submissions that we have received where you obviously have a contrary point of view? You might not address that today or tomorrow, but we would appreciate you alerting us to your contrary opinion, should you have one, so that the record is complete in that sense.

Mr Needham: Yes, we will be doing that.

CHAIR: We have jumped to the crime area, Mr Callanan. I see you becoming impatient, because no-one is asking you any questions.

Mr Callanan: I did not realise that it showed.

CHAIR: Sometimes in the public arena it is said that the CMC needs to be going after the 'Mr Bigs' of organised crime, or words to that effect. How does the CMC assure itself that, in relation to organised crime, you are actually targeting the areas of activity that are a top priority and where you really will make a difference?

Mr Callanan: The process begins with a fairly regular market scan, if you like, looking at the various crime markets that operate in Queensland. It is a process that we still refer to as the crystal process. That had to do with the approach of the Queensland Crime Commission. The reference to 'crystal' was in relation to a crystal ball and trying to gaze into the future to see what the emerging trends were. For example, when that process was first undertaken, the market that was identified as representing the greatest risk to the people of Queensland was a drug market, and it was the heroin market as opposed to, say, cannabis within the drug markets or other markets such as organised shoplifting and fencing stolen property et cetera. Over time, as you would no doubt be aware, the strategic assessment process led to the identification of amphetamines as the major risk.

The process involves setting the various markets against a risk matrix, which looks at the extent of the offending, the seriousness of the consequences to people of the offending and a range of things like that. That is generally how we identify what areas of criminality to target. Identifying the targets in relation to whom tactical investigations are undertaken involves a process of what we call target identification—that is, looking at a range of intelligence reports and intelligence holdings, the operations of other law enforcement agencies and our own operations to try to identify those syndicates in the high priority markets that are active and also those in relation to which there are investigative opportunities. Out of the target development will come a proposal for a tactical investigation. That is assessed by a group called the Crime Intelligence and Research Review Committee, which involves the senior intelligence people and the senior crime investigations people in the commission. It is decided whether it is an appropriate target and then the actual investigation proceeds.

If I can say with some humility, the process has proved itself to be an effective one. When you look at the levels at which eventually arrests occur and people are imprisoned, the levels of drug seizures and the assets that are restrained, we are reasonably confident that we are getting to the upper levels of these criminal syndicates. Albeit we have to identify targets in terms of numbers of arrests and amounts of drugs and assets et cetera, what we are really more about is a process of endeavouring to disrupt and dismantle organised crime syndicates. Of course, I cannot talk at all about current operations, but I can assure the committee that at the moment the two active organised crime operations that the commission is undertaking show great promise in terms of getting to the very top of a couple of significant organised crime syndicates.

CHAIR: How does this approach compare or contrast with the approach of, say, the New South Wales Crime Commission or the approach of the Queensland Police Service in this area?

Mr Callanan: It is very like the New South Wales Crime Commission. Tim Carmody and myself spent a considerable amount of time at the New South Wales Crime Commission in the early days of the Queensland Crime Commission, finding out how they do things. The idea of the risk assessment approach was original to the Crime Commission. The QPS now takes that kind of approach. Thanks to the Assistant Commissioner of State Crime Operations Command, I am part of their strategic planning team.

Their intelligence areas are now much more tasked with these broader strategic assessments. We, I think I can say, do tend to stick at it rather longer than the Police Service. Our ambition is to get to the top. There is always the temptation, once you have got some product—some drugs or whatever—to make arrests to take out the drugs, for example. There are also issues about letting, as the saying goes, drugs run. We try to avoid doing that. We tend only rarely to use controlled operations and covert police operatives. Our focus is much more on covert surveillance, partnerships with federal agencies, the use of TI and things like that.

Naturally, of course, the New South Wales Crime Commission has its own telephone interception powers and its telephone interception facilities are extraordinary, I think I can say. It has a tremendous set-up: a whole floor of its own building. It owns its own building in the Sydney CBD, which is another thing we are jealous of, I suppose. That is generally the differences, I think.

CHAIR: Just talking about funding for its own separate TI facility, in part of your TI proposition you are arguing for a separate TI facility for the CMC which would be separately funded. Has any cost assessment been done—a budget for such a facility?

Mr Needham: No, not yet. It will have to be done. I understand that the QPS is starting to do one for itself.

CHAIR: Is there any ballpark figure? Are we talking about $1 million, $5 million or $10 million? You might go for the bigger figure.

Mr Needham: I have heard some ballpark figures stated for the QPS. I do not know the source of them so I should not quote them publicly.

CHAIR: What about the New South Wales Crime Commission; do we know how much it costs to run its TI unit?

Mr Callanan: The Director, Intelligence and the Director, Crime Operations are undertaking some inquiries. It has not all been drawn together yet.

Mr Needham: We now have a committee that is starting to look at those sorts of issues. It is fairly hard. There is an annual report that is put out by the federal Attorney-General's department which does give costings for the various agencies, but it does not do it, if I might say, in a very helpful way. It just has an asterisk indicating that these may include capital costs. You do not know if they are the ongoing annual costs. There are costs involved, of course. Some of them that are very much greater obviously have some capital component in them. But it is very hard to draw anything from those. The only look that I have had so far is at those. There is an ongoing cost but that is to be expected. We have an ongoing cost now for our CCR, our call charge records, that we have to pay the carrier to get those details for us on each occasion. If we get TI we would have to be paying a carrier to be providing that service to us. There are going to be ongoing costs. There is the one-off capital cost of setting it up, there would be the cost of the carrier on an ongoing basis and then there would be the cost internally of staffing the unit, the listening of the monitors et cetera. There is no doubt there would be a resource implication.

Mr Callanan: The one thing that I do recall being told at the New South Wales Crime Commission was that effectively in terms of monitors and so on—that is, people who actually listen to it—it works out at about 1.5 persons per line they are intercepting at any one time. On a major investigation, if you have a dozen lines, that is a lot of people.

Mrs LIZ CUNNINGHAM: I have a question for Mr Lambrides. The minister for state development in her submission said that the CMC had written to all agencies advising them of a number of protocol changes to the referral of complaints of official misconduct. What are those protocol changes?

Mr Lambrides: I think that is a reference to section 40 directions. I assume that is what it is because there is nothing else that I am aware of. You would be aware that the section 40 directions have been applicable to three of the major agencies—that is, Health, Education and the Brisbane City Council—for some time and more recently a number of other departments were brought into the loop and now, as of 1 July, all departments have been issued with section 40 directions. We are now about to roll out to the local government area. We have already discussed that with Mr Hallam with a view to using resources at the LGAQ to assist in that regard. I think that is what is being discussed there.

Mrs LIZ CUNNINGHAM: Can you give me a before and after example? What was the reporting process before these changes and what is going to be the process after?

Mr Lambrides: They would have had to report on a case-by-case basis up until the section 40 directions. Now with the section 40 directions they will be able to, in relation to a certain category of matter—the less serious matters, obviously—deal with them straight away and report to us on a monthly basis by way of a schedule. We see that there are greater efficiencies not only in terms of turnaround time for assessment, because obviously that will not be necessary, but also it will mean that managers will be able to get on and manage straight away. We see that there will be greater benefits for the public sector in the introduction of these section 40 guidelines and directions.

Mrs LIZ CUNNINGHAM: That has certainly been discussed with us in general before. In light of what has been said here today about audit trails, reviews and the ability of both the CMC and the PCMC to be able to monitor the actions of one another, there will be a diminution then in the ability of the CMC to oversee the activities of departments in terms of misconduct complaints?

Mr Lambrides: I am hoping that with the savings that are accrued by virtue of these section 40 directions, savings in the assessment process, we will be able to move those into the monitoring area. That is one of the benefits that I hope will come out of both section 40 directions plus the restructure of Complaints Services. Plus I moved some resources from the investigation area into the monitoring area specifically to focus upon what is our strategic direction for the next five years—that is, this very important aspect of monitoring,

Mrs LIZ CUNNINGHAM: I have a question for Mr Needham, and I may be barking up the wrong tree so I am happy for him to clarify that. You just talked about quantifying the cost of TI. You have said that that has not been quantified, there has not been a budget attached to it either generally or more specifically, but there has been a specific amount of lobbying for TI both prior to your taking the chair and since. That raises a question in my mind about lobbying for or being active to gain certain powers and not knowing the intrinsic cost of those powers.

I wonder whether there has been any development done from your point of view in relation to the succession process. There was a lot said in the past about the inability of the CMC to have appropriately qualified officers to fill those senior positions but there appears to be, from my understanding of what has

been said so far today, equally a lack of succession planning or evidence of succession planning. I just wonder whether there is a plan to have a continuum; if an issue is going to be progressed there is also going to be a development of either expected costs or genuine planning for the problem that is being aerated?

Mr Needham: It is difficult. For us to do the anticipated costings in relation to TI, what we first have to do is to work out the form of TI listening post situation that we incorporate. As I understand, there have been different ways done in the past by different organisations. It used to be that it was a stand-alone situation with all the listening posts and all the lines where they were taken off separately and done that way. I understand the New South Wales Crime Commission has devolved what they consider to be a better way of doing it: of having it in smaller groupings more closely aligned with the investigative teams. There are all sorts of aspects like this. We could get perhaps a ballpark figure but it would be very much a ballpark figure.

If we ever get TI, what we will have to do is embark on a project of working out the best way to actually on-the-ground utilise TI. Having done that, we would have to work out what is the best of the technical material, and do not ask me for the details because our IT people would have to look at all this, but I understand that there are differing pieces of hardware that you can use. We would have to work out which of those should be used; they would have to be evaluated and assessed. In relation to methodologies, Mr Callanan said about 1.5 operators per line. I would be very interested in investigating whether that could be done more efficiently. Some lines perhaps are not as time sensitive. Sometimes you need to know immediately what is being said, especially if you have people out in the field doing something, and the lines must be monitored perhaps on a continual basis. Others could be monitored where the recording is made as calls are made during the day and at the end of the day, if there has been an hour and a half worth of calls over the 10 hours of the day, perhaps the first thing next morning someone sits down for an hour and a half and monitors, in effect, the one and a half hours of calls rather than sitting there for 10 hours doing it. All these sorts of things would have to be done and evaluated before you could start to work out your costs.

That is a fairly resource-intensive exercise in itself and requires a fair amount of the time of our officers. It is a matter of deciding how you utilise your resources at a particular time. You make an assessment as to the likelihood that you are going to need this assessment in the near future and you decide then when is the appropriate time to move in and start to ascertain these sorts of figures and pieces of information.

In the past it certainly has been thought that it was not worth expending the resources. Even the resources that we are putting into it now are, I might say, really quite low key. There has been no assessment done. At best we are just starting to gather information about these things on a relatively slow basis; it is not an urgent project of getting it in. Because we do utilise TI products that are obtained by other people we go to some meetings on these things. If Mr Keen has to travel down south to a LEAC meeting he will line up and spend a couple of hours after it with one of the agencies and start to make some inquiries. So it is being done at the moment. We have started to do it on a relatively low-key basis.

Unless we were lucky enough to be told that we should move very quickly on it, it is something that probably could take us up to another 12 months to start to go through and collate all this information; it is just as people can put some sort of time into it. We are not taking him offline from his normal work to spend a whole lot of time and put resources into this. It gets back to the old thing of the discretionary spend.

CHAIR: A frequent criticism of the CMC by the Commissioner of Police in recommendations the CMC sometimes comes up with for new initiatives that policing should adopt—for example, the hand-held tape recording issue which has been going on for four, five or longer years—has been that the CMC makes recommendations about things that should be done with little or no regard to the cost implications of the proposal.

I have a similar concern, I must say, about the recommendation that the CMC should be conferred jurisdiction over private sector entities that undertake public purposes in that we are not in a position to assess that proposal that you put to us, in my view, in the absence of a researched position being put to us that also includes examining the cost implications, among many other implications.

So how can the committee give an intelligent response to such a proposal when the proposal has not even been scoped? Likewise with telephone interception—and I adopt Mrs Cunningham's observations about succession planning, if we recall the history of that issue—how can we in a complete way address your position on telephone interception when we have not had put to us the proposal with some sort of scoping of what would be involved, what accountabilities the CMC would adopt and what the cost implications would be? In the absence of those things, if this committee adopts propositions that come from you, the government often is not inclined to take them up because of the inadequate consideration, from its point of view, that the committee has given to the propositions.

Mr Needham: With respect, I think the committee might be thinking it needs to take on more than it has to. What we would only ever ask from the committee is that you give in-principle support to a matter.

May I put it this way: I am not sure how recommendations about police used to be made in the past, but I know the attitude that we take now. If there is a particular matter that requires further research as to whether it should be brought in by the police, we do not word the recommendation to say that the police

should go out and implement it; we say that the police should investigate whether it would be possible to implement it. So we say that, in principle, it would be good and they should investigate whether it would be possible to implement it. That is the way it has been worded in those sorts of circumstances.

In some cases, we can say they should do it but, in others, if it is going to require further aspects—such as resourcing, and not so much the effectiveness side of it, but the logistical operational sort of matters that would have to be looked at within the QPS—that is the way I prefer to word them: that is, this is good in principle and they should investigate the possibility of implementing it.

It is the same with some of these other matters. TI, as I see it, is a little bit different. That is a matter where it is going to cost money, we know that, but we know that every other jurisdiction in Australia has obviously investigated this before the respective government brought it in, and their investigation obviously showed that it was worthwhile because every other jurisdiction in Australia, where a government has gone through that process, has brought it in. We are the only one left, so that gives us a certain amount of comfort that this committee should be able to give in-principle support to the idea of TI. We know it will always have to be looked at by a government before it is implemented. With respect, on those financial aspects of it, that is not a matter that we can go off and research and put material before you; that is a matter that at the appropriate—

CHAIR: Why not?

Mr Needham: Because we cannot say what it will cost the police, and their costs will be so much greater than—

CHAIR: Certainly, but in relation to the TI for the CMC, even two pages is better than nothing, if it scopes the cost implications.

Mr Needham: With respect, the way these things happen—we know—is that, if this committee gives in-principle support to it, before any legislation is brought in, it will be looked at very carefully by the particular area of government that will be responsible for it. I do not know whether this would go through Premier's, Attorney's or the minister for police; I am not sure which area would take the lead role in it. But whichever department is given the lead role in it, then that department with assistance from other departments, if need be, and with other assistance—whatever information they ask from us we would provide, and whatever information they ask from the QPS would be provided—would investigate it and that would then all be looked at before the final decision was made.

All that would be required from this committee is the in-principle support—or non-support—that it can be done with accountability and those sorts of aspects that have been looked at in the past and whether it would be an effective tool. These sorts of things have been looked at in the past by this committee. This committee in the past, from my understanding, has never looked at the cost-effectiveness of it or the cost to government, whether the budget situation of the government is such that at that particular time it can afford to bring it in, because there will be an initial capital cost and lesser ongoing costs. Those are issues that the CMC cannot answer and those are issues that, with respect, this committee cannot answer. That is an issue that the government will have to answer. The government can turn around and say, 'We agree with the committee—that in principle it should be able to be done—but, unfortunately, it cannot be done in the budgetary constraints at the moment. We will look at it in the future.' It could be something of that nature.

I noted the police one again and I have had a very quick look at the Police Service submission. I had hoped that had gone away. No report goes out now that affects the QPS without it being given to the QPS for their comments. I note that they say that sometimes they do not have sufficient time; if that is the case, we will have to look at that. I know sometimes it is difficult to get them back within the time we ask, and I can understand the difficulties there.

CHAIR: We sometimes find it difficult to get submissions within the time that we ask.

Mr Needham: Indeed.

CHAIR: Not referring to the CMC, but other organisations.

Mr Needham: I understand you got it yesterday. I agree with the principle that, when we are considering making recommendations that affect not just the QPS but indeed any agency, we must give that agency the opportunity to comment upon them. We should do that for our own protection because we would look very foolish if we made a recommendation and they turned around and showed us in 10 minutes why it was utterly impractical. So we need to do that anyway—so whether it is practical, the cost aspects, all those sorts of matters. They must have the opportunity to comment.

It is my understanding and it is certainly my intention that every agency that we are intending to make any comment about or recommendation on should have the opportunity to comment to us before it goes out publicly. That is always given, to my understanding. If it has not been given, it is not complying with what our requirements are.

Mr Lambrides: The other benefit associated with that is that you get ownership from the department, and I think that is very important. So we like to get feedback from them and ownership so that, when it comes to be introduced, it is not introduced because the CMC told them to; it is because they are happy for it to be introduced. There is a greater willingness for it to be accepted within the department generally if in fact that is the case, rather than it being seen as being imposed by some external body.

Mr Needham: We often ask them if they can appoint some officer to act as the liaison point for us on a particular project, and that officer is then kept very closely informed throughout the entire project, which adds to what Mr Lambrides has said is the ownership of the department in the final product.

Mr HOBBS: Mr Needham, I have raised mischievous claims before, and I want to advance another side of it as well. I note that the Department of Corrective Services has put a submission in which it says, 'Unfortunately, at times the department has experienced some reluctance by the CMC to initiate proceedings against complainants whose complaints have been found to be either false or misleading as prescribed in section 217 or 218 of the Crime and Misconduct Act 2001.'

You have mentioned some of this before, but should there be a procedure whereby, if someone has been cleared, a documented assessment is done on whether the claim was false or reasonable? And 'reasonable' can be a bit cloudy, I suppose. That could be about a council decision or whatever. In other words, when a mischievous claim is made, the reputation of that Public Service officer or that councillor is immediately sullied because, as you would be aware, often these reports go to the press and so forth. A while ago, you mentioned that when councils make a decision behind closed doors they should document it. Shouldn't it be the same for the CMC in that sense too, so that the law is seen to be upheld?

Mr Needham: Yes, I accept all of that. But, as I have already indicated, we do document it and it is looked at in every investigation we do. I am not sure about Mr Lambrides, but it has surprised me that we have got this from Corrective Services and the local government. I think they were the only two.

Mr HOBBS: I think Health too was a bit that way.

Mr Needham: No, I do not think Health were on frivolous and vexatious. Obviously, it is an issue. Where we are falling down is that we are perhaps not getting the message out to those agencies because, as I said, we are looking at it in-house. It has got to be then those ones that look at themselves where they see it is false and vexatious in their opinion.

In Mr Rockett's letter there dealing with it from Corrective Services, they are saying that they are false and vexatious. None of them have ever been referred to us for us to consider, so perhaps that is where the failing is. We might have to look at how we deal with this, whether we get it out at liaison officers meetings to get the message across to them if they have one of those and they are able to show that it is false and vexatious—not just that it was a damn nuisance. It is a fairly severe thing to do to go and prosecute someone.

Mr HOBBS: Should you go back to the particular person who has had the complaint made against them and ask them to put in a formal submission in relation to that particular matter?

Mr Needham: It should not even need to go back to them; it should be part of the investigation. As part of the investigation, if the investigator looking at it thinks, 'This was ludicrous. This complaint should never have been made; it was frivolous and vexatious,' we need to ensure that agencies refer those ones back to us so we can look at whether action should be taken. So we will have to look at that and do it through the liaison officers meetings to get that message out to bring them back to us.

Mr Lambrides: The other thing we can do, which I think would be a good idea, would be to put specifically that issue in our *Facing the Facts* manual. That is, if in the course of dealing with a matter that we have sent back to you, you believe there is evidence to prosecute someone for making a false complaint, please bring it to the attention of the commission for its consideration.

Mr Needham: That is the benefit of these reviews: they do throw up these issues that perhaps we are not seeing.

Mr ENGLISH: It is also correct to say that it is not just a matter of saying that it was false or vexatious or believing that it was false or vexatious. You still have to prove it beyond a reasonable doubt, and that is a very high standard.

Mr Needham: Section 217 is quite interesting. We cannot just immediately go out and prosecute someone for putting in a false and vexatious complaint. The process that is set out in the act is that we give them a notice indicating that we consider their complaint to be frivolous and vexatious and they must not make it again, and if they do make the same or similar complaint again, then we can prosecute them. So there is that warning that can be given. We can give that warning without being utterly satisfied perhaps that it would be able to be proven.

Mr ENGLISH: So you can give that warning at a lower level than beyond—

Mr Needham: We would have to be careful of that, because really we should only do it if there is proper cause to believe it. It is not something that should be done loosely. But, in appropriate cases, we could give that warning. I am sure it might assist subject officers if they knew that a warning was given to this person that their complaint was considered as being possibly frivolous or vexatious and that they are not to make the same or similar complaint again. So there is that two-stage process.

Mr ENGLISH: Mr Callanan, I would like to go back to your comments on crime and the strategic view you take towards crime. To whatever level you feel comfortable, could you give the committee an idea about what the commission's strategic crime priorities are, what you see as the most significant risks, if you can?

Mr Callanan: At the moment?

Mr ENGLISH: Yes.

Mr Callanan: Looking at the crime markets, the so-called hard drug markets, the drug to which we pay most attention at the moment continues to be amphetamine and in particular methylamphetamine. Next down from that is ecstasy, MDA, MDMA and GHB—the so-called party drugs. We are finding a lot of cocaine at the moment. The Strategic Intelligence Unit is doing a strategic assessment, together with the crime research people, on whether or not the cocaine market is expanding. A few years back cocaine was fairly rare, but it is emerging as a real issue. What is happening—and this may again be related to the heroin drought—is that poly drug use is on the increase. At the moment, whatever drug is around is what the people who use drugs purchase and use.

Lower in the scale, but again an emerging risk, is cannabis. I say that because most of the cannabis around now is not the bush grown or the plantation grown cannabis, it is grown hydroponically. A lot of it is being imported from South Australia, where they have a law that I think allows individuals to cultivate legally five plants. What you end up with is five three-metre cannabis plants all with very high tetrahydrocannabinol concentrations, and it is very marketable. Again, the so-called outlaw motorcycle gangs are involved in this. There is a phenomenon of South Australian hydroponically grown cannabis coming into Queensland, and cottage industry manufactured Queensland amphetamine going to South Australia and on to Western Australia. So it is just like any other market.

CHAIR: It just happens to be illegal.

Mr Callanan: Yes. Well, that is why we take the approach that we do: that people are in it for money. Some of them, of course, are drug addicts, particularly at the lower end.

CHAIR: And hence the importance of the confiscation of profits of crime.

Mr Callanan: Exactly, because that is why they are in it. If we can take away the profits, we reduce the motive to engage in it. There was a public release of a crime bulletin about the stolen property market in Queensland. Identity fraud is, as all law enforcement agencies recognise, a major emerging crime problem. That is all the organised crime stuff. We continue to rate paedophilia as an enormous risk. We focus on it. Then, in the serious crime area we investigate, and continue to investigate, our fair share of murders, rapes, arsons and things of that kind.

I am just reminded, while I speak about our serious crime function, that Mr Needham, in answering a question from Mr Wilson, was talking about the interaction of our crime and misconduct areas. What we have on our plate, somewhat unusually, at the moment is an instance of a serious crime investigation where we are engaged in bringing up a fairly strong suspicion of some police corruption. Through the Strategic Intelligence Unit and talking to misconduct, we have now mapped out a strategy that will, in the near future, involve me for the first time presiding over a misconduct hearing utilising our crime executive legal officer as counsel assisting.

Mr Lambrides: And, interestingly, senior officers of the Queensland Police Service have really pressed us to investigate these together. So, rather than it being something that they do not want us to look at because it might involve someone that crime is looking at, they are very much encouraging misconduct to become involved in it.

CHAIR: Can I ask a question of you, Mr Lambrides. Going back to serious misconduct, moving back from the crime area, the threshold test for determining whether or not an allegation of official misconduct warrants investigation, if someone makes an allegation in the press or to you directly that potentially involves serious official misconduct, how do you assess whether or not you will investigate that and take the appropriate proceedings or choose to say, 'No, it is actually not capable of being official misconduct,' and therefore you have no jurisdiction.

Mr Lambrides: We have set criteria, first of all, for determining whether we should investigate a matter. That includes whether it is systemic, whether it is complex, whether it needs our coercive powers or whether we need to investigate from the point of view of a deterrence. So we have set criteria in relation to whether we should investigate. Then below that there is a set of criteria about whether we should monitor it. If we send it back to an agency—

CHAIR: Isn't the first question: is it capable of being official misconduct?

Mr Lambrides: That goes without saying.

CHAIR: Sorry. If I am misleading you, that is what I want to focus on. How do you assess whether an allegation put to you is potentially one of official misconduct, because in the absence of it potentially being official misconduct then you have no jurisdiction.

Mr Lambrides: That is true, but the vast majority of matters that we would investigate at the commission are criminal offences that have occurred in the course of a person's duties. That is almost invariably official misconduct. It is not really a difficult question for us to determine as to whether or not we should investigate the matter. It has already gone past the stage of—I will take it back one step.

When the complaint comes in, it goes to an intake officer. If it is a matter that looks like it is something that we might investigate, it then gets sent up to the Misconduct Assessment Committee which involves me, the director of misconduct investigations, the director of complaints services and another deputy director. By the time it reaches us, there is no question that it is OM. As I say, most times it is pretty straightforward that is not an issue. The issue is whether we should investigate it, whether we should monitor it or do it cooperatively or whatever.

CHAIR: In your submission at pages 88, 89 and 90 you give us a little snapshot of some complex, high-profile operations. I think there are 11 or 12 listed there. To my reckoning, in three of those 12 or so there is a finding that there is official misconduct and, conversely, in the other eight or nine there are findings that there is no official misconduct. That is what is set out on these pages.

Mr Lambrides: There is a difference between, at the beginning, looking to see whether it is within jurisdiction.

CHAIR: I understand that, and hence my question. If, out of these 12 that presumably satisfied the threshold examination of potentially being official misconduct, only three on examination were found to involve official misconduct—in other words, eight or nine were found not to be so—does it not suggest that, at least on the face of it, there is poor decision making happening at the point of early assessment of whether or not the matter is potentially official misconduct?

Mr Lambrides: With the greatest respect, I do not agree with that because most of those matters are of such public interest that we could not simply say, 'We're not going to investigate this matter. We don't really think we'll get anything at the end of the day.' These are matters of high public interest. These are the things that maintain public confidence.

CHAIR: The fact that it might have a higher level of public confidence does not give you jurisdiction—

Mr Lambrides: No, but we have already got—

CHAIR:—in the public interest.

Mr Lambrides:—the jurisdiction to investigate. The mere fact that at the end of the day you cannot substantiate the claim does not mean you did not have jurisdiction; you clearly did have jurisdiction.

CHAIR: But you do not have jurisdiction to investigate anything. You have jurisdiction to investigate allegations that raise a reasonable suspicion of official misconduct.

Mr Needham: If I could interrupt on it, it is not an allegation that raises a reasonable suspicion of official misconduct. Official misconduct is conduct that could, if proved, be. All it has to be is an allegation of official misconduct.

CHAIR: And you have jurisdiction; the mere making of the allegation.

Mr Needham: We have jurisdiction on that allegation. Now, as to how long the investigation lasts, of course, will depend upon how spurious or otherwise the allegation was. If there is absolutely nothing in the application, and it is purely an utterly made-up thing, then the investigation is not going to last very long.

CHAIR: So the width or narrowness of your jurisdiction is a product entirely of the form in which an allegation is made or the type of allegation made.

Mr Needham: Indeed. I am looking at these matters. I see the Palm Island bribery allegation. There was an allegation that the Premier bribed the island council. That gives us jurisdiction. We investigated and found that, no, the allegation was not made out, but that gave us jurisdiction. Section 15 specifically states—

Official misconduct is conduct that could, if proved ...

If someone is alleged to have murdered someone, if that were proved, it is a criminal offence.

CHAIR: I suppose it does raise the question of how quickly or thoroughly you get to the issue of whether or not there is any material that realistically could be relied upon for a substantive investigation. Even just from a resource allocation point of view, you cannot go running off investigating every allegation of official misconduct.

Mr Needham: I said earlier that we receive—I am not sure what the total figure is, because we categorise them into complaints that are complaints which theoretically—

CHAIR: I understand the big picture of the 4,000 or so, but what about the serious ones?

Mr Needham: The point I am wanting to make is different to that. We get our 4,000 complaints, but they are not the only things that are referred to us. We have other matters that are categorised as issues. Those are matters that just are not within our jurisdiction at all. Those are matters where they are complaining that something is not—and cannot be, even if proved—official misconduct. They go off to one side. So we get 4,000 or thereabouts that, if proven, could be official misconduct. Of those 4,000, a little under three-quarters—about 73 per cent, I think, were the figures last year—of those we either investigate or send off to a department to deal with. That leaves one-quarter of them—about 1,000 of them—where theoretically, if they were proven, the allegation could be official misconduct. But obviously there is just not enough there that raises any sort of reasonable suspicion, and we just wipe those as not warranting the utilisation of our resources, and they do not even get referred back to the unit of public administration. A letter goes back to the complainant. So you are right: some matters come in that just are, theoretically, a complaint of official misconduct, but those thousand do not even get past first base to be sent back to the department.

Mr Lambrides: But we would have jurisdiction in relation to them because, theoretically, they could amount to OM if proven.

CHAIR: I suppose I was startled when I read those pages because I thought surely this is material that would have you at least review how rigorous your early assessment processes are on even serious official misconduct allegations. Leaving aside the individual ones, which I understand that you can argue well about, if you look at it statistically, even though there are limited statistics, three out of 12 is not what you call a very high hit rate.

Mr Lambrides: But, with the greatest respect, it is just as important to 'clear' someone in a high profile position as it is to get a brief together and send it off to the DPP. In fact, the person should be cleared, and I think it is in the public interest that that happens, and it happens more often than not. You can see that. But that does not make it any less important an investigation. That is one of the problems that I keep foreseeing or recognising in terms of judging how well we do. If we were to go merely on the basis of charges, we would be in a position where we would not regard any of these as important investigations when clearly, in my view, they are important investigations because they have 'cleared' public officials from very serious allegations.

CHAIR: We might come back to that later.

Mr CHOI: Page 68 of your submission states that it remains a problem for agencies who manage complaints of official misconduct that also involve some level of criminal conduct which may be investigated by the QPS. You stated in your report that any attempt to address this problem by allocating a police position to the shared service provider has not been successful. Could you elaborate on that for me?

Mr Lambrides: In the same way as there are dedicated police officers in the Corrective Services area, in Health and the like, we thought that it may be beneficial for there to be dedicated police officers to these shared providers so that when a matter was sent back to an agency that did have a criminal aspect to it they could utilise the police officer associated with the shared provider. The other benefit that we saw that might have accrued from that is that departments express to us regularly concerns that they cannot get information from the Queensland Police Service about investigations that it is conducting into their employees. So we thought that might be a means of assisting both of those areas. Unfortunately, it was considered that the resources of the service could be better utilised elsewhere.

Mr CHOI: The QPS themselves unilaterally decided that that is not a good use of resources?

Mr Lambrides: Yes.

Mr CHOI: In your opinion do you still maintain the same—that is, that it would benefit?

Mr Lambrides: It is worth a try in my view.

Mr Needham: It seems to work well in those departments that have police officers within them. Queensland Transport does, as does the department of education and Q-Health I think—some of those very large departments. It seems to work quite well within those.

CHAIR: Are there any other questions? If not, we might adjourn for 15 minutes and return at 3.15 pm.

Proceedings suspended from 3.01 pm to 3.20 pm

PINCUS, Mr Bill, QC

CHAIR: Good afternoon, ladies and gentlemen, and welcome, Mr Pincus. We are very pleased that you have been able to come and speak with us this afternoon. Thank you very much for that and thank you for your submission. We are happy to hear from you any additional comments that you would like to make before we ask a number of questions, if we may, of your submission.

Mr Pincus: Yes. Briefly, and this may be somewhat repetitive, I do think that the position of the chairman is fairly awkward. My service was mainly with Mr Brendan Butler, who seemed to me to be very much overworked. His advantage was that he actually liked work, so it did not worry him so much. But he had to be the public face of the commission. He had to deal with lots and lots of very bureaucratic matters and also be the referee in turf battles which took place within the commission. I thought he was just far too busy. The suggestion which I have put forward—and I made the point that this could only take effect after Mr Needham goes—is a rather radical one. As you probably know, my suggestion is that the chairman should be a part-time person—not getting a full-time salary of course—and the present position of chairman/CEO should be split so that the CEO does not have to trouble about being the public face of the commission.

I made some reference—and I was on uncertain ground here—to the position of the previous chairman, who was a fairly well-known Liberal Party politician from Tasmania. My impression was at the time that he had a slight advantage over perhaps other chairmen in that everybody knew who he was. Everybody knew that he was familiar with the political area and he just had a higher profile. It seems to me that the chairman position would work a little better if it was a part-time job. It could not be a full-time job because you would not easily get the sort of person you want to work full-time. The CEO would still be a fairly important figure, but the person who would speak on behalf of the commission would be a part-time, high-profile person if possible.

I have noticed that the chairperson position is pretty good financially at present. I do not know what the chairperson is paid, but I do notice—and I had not seen this before; maybe the commission had not either—that in section 233 at the end of the chairperson's term of office that person is entitled to be appointed to an office at a salary not less than the current salary level which he has. To some chairperson's mind—I do not suggest this applies to any particular one—it must be like winning the casket.

The other thing that is not in my submission but which I have thought of more recently is that, as far as I know, our Tasmanian friend is probably the only chairperson who came from outside the state and I wondered why that was. I understand that the job is advertised nationally, but it seems to me that, particularly if you were going to introduce the system which I advocate—and even if you were not—the selection of a chairperson could be done on a headhunting basis. This committee in particular might have some ideas about who might be a suitable person. I see no reason why it could not be an ex-politician from either side, somebody who is really well known to the community. That is one of the ideas that has troubled me since I left.

The other principal one—and I said something about this in my submission—is that I was always concerned at the, as it seemed to me, low status of commission members. That was illustrated, not during Mr Needham's term but prior to that, when a draft of the commission's annual report came out and it was pointed out to the then chairman that the first mention of the commission members occurred on page 59. It seemed to us to be pretty odd, but it may have been a reflection of the way the commission was looked at by the staff.

Another very minor and some might think trivial reflection of it was that I remember when I had not been around for a while I came in one day to the commissioners' room—because all of the part-time commissioners were in the one room, which did not seem to me to be a problem—and it had been made significantly smaller. I did not really mind it being made smaller, but I thought somebody might have mentioned it to us before they did it

CHAIR: You thought you might have been getting a message.

Mr Pincus: Well, maybe. We had some very able people I thought, present company excepted, on the commission when I was there. To take an example, Ray Rinaudo was a really excellent commissioner. He was a lawyer. He was not a particularly academic lawyer, but he knew a lot about the way the legal system worked. He was immensely valuable to us really in legal matters. I was just talking to Mr Needham before I came here. I asked him about a complaint that was made against the commission, I think, by Mr Morris. I may have got this wrong; maybe it was Mr Morris. It was said that Mr Needham did not explain adequately why he had accepted one opinion rather than another.

To go back some years before my time, I remember there was an occasion when the commission acted on an opinion from a single counsel. I read the minutes and it just seemed to me they just acted on it automatically and gave, I thought, pretty impractical advice which got the commission into a fair bit of trouble. I have suggested in my submission that really it is quite important to get a couple of pretty experienced, critical lawyers who are not going to just tick things on the commission. I do not even know who is on the commission now, frankly, but I think that is very important. With regard to some of the really big legal issues, let us take the matter concerning Mr Beattie and what he was supposed to have done at Palm Island. That was a big legal issue which required a lot of careful legal analysis. Take the more recent one involving Mr Nuttall, who was supposed to have told untruths at one stage. That again was a very important legal issue fundamentally concerning the privileges of parliament. You would not want that decided by any body which did not include one or two fairly high-powered lawyers.

There is nothing else I particularly want to add, thanks Mr Chairman, except I do want to say this, and I hope it is not taken in the wrong spirit: during the time I was on the commission I thought the committee worked extremely well, particularly for a bipartisan committee. I thought it was a great credit to the members, and I have in mind particularly the National Party members, who seemed to be so cooperative and did not make any political capital. So it was quite refreshing to see that and I hope it is continuing.

CHAIR: Thank you for those comments, particularly your concluding observation. Can I thank you for the comments that you passed to us at the point of your retirement. They were greatly appreciated by the committee. We have a number of questions we would like to explore with you if we could. One that I would like to ask to open up relates to the issue of the role of part-time commissioners in an organisation such as the CMC. What avenues in your experience do you think might be available to support or better resource those in the part-time commissioner role so that they are actually able to have a more effective input into the operations of the commission without detracting from the reality that they are part-time and also arguably the desirability that they be no more than part-time?

Mr Pincus: I agree with that last observation, if I might say so. What I saw during most of my time there—and perhaps all of it—as to the low status of the commission was that it was really just a long trend, that that was the way things had been. I remember Mr Rinaudo at one stage telling us that he thought that we had had a particularly good year and he thought, without quoting exactly what he said, that was because the commission had been more active. That was really my impression—an active commission which got involved in the administration, which got involved in what people were actually doing and talking to the staff, people who had time to move around. I spent a fair bit of time in the commission's building and I thought that was very valuable to me, because I found out who was who and what was what. I was actually able, as I think I mentioned, to sometimes take part in the commission's work, which gave me a much greater appreciation of its difficulties and perhaps some disadvantages under which we laboured.

The drift was, I thought—and I do not say this as a criticism of any particular chairman—for the chairman and the senior staff to move into the management role. I notice that on the commission's home page there is a statement about Linda Lavarch, and then it goes on to state—

The CMC is headed by a five-member group referred to as 'the Commission'.

CMC corporate policy and strategic directions are set by the Commission and implemented by the 10-member Strategic Management Group (SMG).

I would, with respect, question whether that is quite accurate, because during my time—which was some years—there were not many occasions on which the commission seriously considered what it was doing and what it should be doing differently. To take one example, I thought that was noticeable in the research area. The research area seemed to work pretty well to me. There may be occasions, but I do not remember any, on which they did something that emanated from a commission suggestion. They really just did what they felt they should do. So I do not think that is correct. It is not legally correct because the commission is responsible for everything that happens there, and the commission, I thought, should somehow or other take greater control. That is why I suggested that the commissioners perhaps needed to be paid a bit more which might encourage them to do what I personally found useful—and that is to get involved in the commission's work.

There was an occasion—and I think people who were on the commission would remember this—when there was some difference about the respective functions of the crime people and the intelligence people and that had been going on, the commission discovered, for quite some time. The commission intervened and that was solved. So when you have what seems to be essentially turf battles it has to be the commission that will get in there and fix them.

I am not saying that the commission is running badly. For the time I was on it, it was generally run very well. It was very effective, but I am trying to think of ways to make it better. It seemed to me that a significant weakness was the lack of influence that the commission had over what has happening. It was not really taking full responsibility. Full responsibility is placed on it by statute. It is part of the law but it was not really taking that responsibility. It may have been partly our fault as commissioners, but, whoever's fault it was, it was not right and I did not think it worked well in that respect.

I would like to see a commission where the commissioners come in more often, where they move around and have meetings with people—not necessarily only the top people—and ask how things are going, where they debrief privately people who are leaving or who have left and find out what is going on. We had to rely upon the heads of the various sections who no doubt are very capable people but they tended to take perhaps a rosier view of what has happening than a sceptical outsider might.

Mr HOBBS: Mr Pincus, thank you for those comments earlier on in relation to the committee.

Mr Pincus: Particularly the National Party people.

Mr COPELAND: You should not be so surprised that we would be cooperative.

Mr Pincus: I do not want to leave Mrs Cunningham out either.

Mr HOBBS: I have been around this game a long time. We saw how it did not work in the past. I am quite determined to make sure that we have a process that actually works. Our committee is fearless in our determination to investigate anything and everything, and that is the way we do it. We do have some good

discussions at our meetings. Apart from that, I am very interested in—and I am sure all of the committee is—in working out how this commission can work better, how we can have better interaction for us as a committee as well and how to get better input from the professional people who are on the commission.

I think in the past it was probably seen as more an advisory role and perhaps evolution is showing that we need to utilise the resources of the commissioners better, for them to be a little more hands-on perhaps. You mentioned the low status of the commission. Maybe we can look at recommending better input. With the make-up of the commission now, do you think we are locked into having certain categories of people on the commission? Do you think we should broaden that and have people like yourself who could take over and run a hearing? Should that be a regular occurrence?

Mr Pincus: Frankly, I do not know how members of the commission are selected in practice. I do not know how I was selected or who thought of asking me. Whether I made a contribution is up in the air. I think that if you paid better—and that is not a consideration that would affect most commissioners but it would affect some—if they got, say, twice as much money, some people would be more inclined to do more work. I cannot remember what a commissioner gets. I think it is $30,000 or $40,000, which is not a trivial amount of money but it might not be thought to be sufficient recompense for turning up pretty often and going to see somebody who is writing a report and saying, 'Let's have a look at what you're doing,' and making suggestions and getting more involved in the commission's work. That was the only way I found out what was happening. We got good reports from the heads of the sections but you got a much better appreciation by going there, as I did on some occasions, and getting involved in writing reports and even doing an investigation.

So I do not know whether broadening it is the problem. I think you really do need people who are not necessarily prepared to sit back and listen—and certainly we had some there in my time. They want to get in and say, 'You've been doing it this way. Maybe you should do it some different way and we want it done that way.' So if you can get really strong commissioners, really able people who are not in the least bit frightened of offending anybody by being critical, I think that is big factor.

Mr HOBBS: If there was some progress made to make it a bit more encompassing—you suggested perhaps a staff member be appointed to assist the commissioners—that would probably help by being able to be better briefed on what the issues are and that type of thing. Is that what you had in mind?

Mr Pincus: Yes, I think so. It would not necessarily have to be a high-powered person. If the commissioners were able to say, 'We want somebody to go and talk to the people, say, in research and get some impression of what they are doing, whether they are happy or whether they are content with their job'—which would be done confidentially of course—that would be a good thing. I did have meetings with some research people and that helped, but if you had a secretary the work would expand to fill the time available. I think that would make the commission a bit more active.

Mrs LIZ CUNNINGHAM: I am concerned that as a member of this committee there could be a sense of disempowerment by the commissioners in terms of their ability to communicate information and concerns to us at those bimonthly meetings. What is it that the committee can improve to give commissioners a positive opportunity to express things such as you expressed in your submission? What was missing during that period of time when you felt the opportunity was not there to bring those concerns forward?

Mr Pincus: You know what the committee meetings were like going back to Mr Butler's time. Mr Butler would talk a lot, the heads would talk a lot and the commissioners were basically spectators. To some extent that was due to the fact that you would not particularly like—at least if you were a sensitive person—to contradict the chairman or these other people.

Mrs LIZ CUNNINGHAM: It would be interesting.

Mr Pincus: One possibility that has occurred to me is that annually the committee could ask each of the commissioners individually whether they would like to give a confidential submission about things. It might be a defamatory submission, but it probably would not be.

CHAIR: It would be protected by privilege.

Mr Pincus: But they might have things that they would like to say to you which are not consistent with commission policy—for example, that we should have a secretary or that we should get that bit of our room back that they took away.

Mrs LIZ CUNNINGHAM: Like you, though, I just presumed that the procedure that was in place when I came on to the committee—and I am sure every committee member is the same—was in place because that was the appropriate process. Your suggestion of an annual confidential meeting might be the answer to that lack of opportunity to express fairly sensitive matters.

Mr Pincus: Going back to Mr Rinaudo, who I really thought was a very useful member, as I have mentioned, he was the one who said at the end of one year, 'We've had a good year this year'—I cannot remember exactly how he put it—'and this is because the commission has been very active.' In retrospect, his opinion, which was a worthwhile opinion, would have been a useful piece of information—that an active commission is likely to lead to a successful year. A passive commission, which is not carefully scrutinising everything that is happening, makes people feel comfortable and makes everybody happy but it does not necessarily lead to the optimum result for the $34 million or whatever it is.

Mr CHOI: Mr Pincus, your suggestion of having a separate chairperson and CEO is an interesting one. The way that I understand your suggestion is that the chairperson would be a figurehead and would probably deal with PR issues most of the time, whereas the CEO would be a hands-on full-time administrator of the CMC. You also stated in your submission that if the two functions were combined, which they are at the moment, then the governing body would be weakened in your view. My first question is: can you explain how that would weaken the governing body? My second question is: would it be correct if there were two separate identities? At the moment we sometimes jokingly say that we would like the CMC to be boringly factual. That is certainly not a reflection on the chair of the CMC. But when you have two separate people—an administrator or the CEO and then a public figure—it would depend very much on the personality of the public figure. I could name a couple of very high profile public figures who perhaps can create nightmares given the chance. I am not too sure how that would work. Could you flesh that out a little more?

Mr Pincus: First of all, I think that the chairperson has too much to do if the job is done properly. I think that they have to work too hard. I thought it was a pity that there were not more public hearings, because that excites public interest in the whole work of the commission. I suspect that one reason for that is that the chairman of the commission has not time for hearings that go on and on. I think it is a pity that the chairman has so much to do and the chairman would work more effectively if he or she were two separate people.

Perhaps a more important point is that the 'us and them' thing would become less significant. It seemed to me that the chairman, and I say this with all due respect to Mr Butler, who I thought was an extremely hardworking and effective man, tended to be over there with the staff making lots of important decisions that we would then be told about. In a sense, that put us in our place. A good example was the way in which the move was handled. As you will remember, there was an amalgamation with the Crime Commission that involved all kinds of difficult problems. I felt at the time—and I still feel—that it was wrong that we were excluded from any meaningful participation in the process. If there were a part-time chairman, in a sense he would not be aligned with the staff; he would be aligned with the commissioners.

Mr Choi, the other point that I want to make is that, as I understand it—and you are probably more familiar with this than I am—it is pretty standard in substantial commercial organisations to have the position split. They seem to find that it works fairly well.

Mr ENGLISH: Section 225 talks about the qualifications of people applying for appointment as part-time commissioners. The civil liberties subsection talks about someone who 'is in actual practice as a lawyer' and has demonstrated an interest in civil liberties. This morning Mr Needham suggested that, while currently that is not causing difficulties, it could cause difficulties down the track. He suggested that that might need amending to say 'has recently ceased practice'. Mr Needham's argument was that, if you are in full-time practice at the bar, you are a very busy person already and you do not necessarily have the time to commit to the work of a part-time commissioner. I would seek your comments on some suggested change to section 225(a). Do you think that could be rejigged better?

Mr Pincus: I had not thought of that, frankly, but now that you mention it I do think it is a good idea. I cannot see any objection to that, because it would make the pool of possible commissioners a bit wider and you might get a better person. Ultimately, what you want to get is a commission that consists of people who are of reasonable reputation, who work hard and who are not too passive. I thought that passivity was a bit of a problem with the commission. While the commission had made a lot of important decisions, as far as I could see the general direction of research, to take an example, never really influenced anything that the commission did or said. I thought that was a failing on our part. We should have done something about it, because what they want to do is not necessarily the best thing to do. They want to do things that they are interested in.

CHAIR: Mr Pincus, is perhaps one feature of what you experienced a question of organisational culture?

Mr Pincus: Yes, that is a good description of it.

CHAIR: No doubt that happens in private sector organisations. Within the culture of the organisation there is a level of acceptance of the active involvement of commission or board members in the operations of the organisation, or it leads to the point of familiarising oneself with the operations.

Mr Pincus: I had not thought of putting it that way, but now that you mention it I think there is an organisation culture problem. At the risk of being repetitive, I think that culture is exemplified by the fact that, as a body, the commission was first mentioned on page 59 of the draft report.

CHAIR: What about an induction program that gave commissioners a vehicle for introduction into the organisation and also building connections between them and people throughout the organisation, and not just at a senior level?

Mr Pincus: Yes. That could help, certainly. I may be giving the impression that I thought the leaders of the various sections were untrustworthy or incompetent. I do not suggest that for a moment. I think that you are not really doing your job if you do not look below that and see what is happening. I take as a good example the apparent difficulty there was between the intelligence people and the crime people, which I thought was ultimately solved by commission intervention when we found out about it.

Mrs LIZ CUNNINGHAM: I have an organisational issue as well: mention is made of a decision being made and the commission being drawn in as a party to that decision when, in reality, the part-time commissioners were not party to the decision. That was presented at a joint committee meeting where we had no way of knowing that that had occurred. What would be a remedy to that? I understand your comment that at a joint meeting part-time commissioners may find it a bit confronting to contradict the chair.

Mr Pincus: There is a certain loyalty to the organisation, yes.

Mrs LIZ CUNNINGHAM: Is there a way through that situation that you can see? A little red flag on your desk?

Mr Pincus: I am sorry, Mrs Cunningham, but I cannot suggest any solution other than that commissioners stand up on their hind legs and say to the chairman—and I am not referring particularly to Mr Needham—'You have one vote and we have one vote, too, and we must have a say in anything significant that happens.'

Mr HOBBS: Mr Pincus, in your submission you mention that we should be using more in-house legal advice rather than using outside counsel. Can you explain to the committee why outside council would not give good advice? Why do you say that?

Mr Pincus: There are a couple of reasons, and one of them is slightly sensitive. When I was on the commission, I always thought that there was too much emphasis on criminal lawyers. There were a lot of brilliant criminal lawyers. If I can mention ones from the past, Mr Casey was a very good lawyer. There is no suggestion made by me that they are not lawyers among their ranks. However, it narrows the field so much. The senior people who practise substantially in full-time criminal law form a tiny slice of the bar and we are missing out on a lot of other talent. I thought we were getting too many advisors from among the criminal lawyers, and I do not criticise any particular one. I thought it was not an efficient way to do it.

In my time, I do not think that the commission was ever consulted as to who should or should not be giving the advice and I thought that that was a mistake, too. For example, I practised at the bar for many years and I was a judge for many years. I knew a lot about the barristers, but I do not think anyone ever asked me, 'Who do you think would be good for this?' That was not because we had a particular chairman, although I suppose it was partly that. It was just because that was the way things happened. It was regarded as a matter that the commission would not have any input into, even though sometimes it would be immensely important, as in the case I mentioned where the commission acted, as if it were holy writ, on what the outside counsellor said, and what the outside counsellor said led to a very bad situation.

CHAIR: I am mindful of the time.

Mr Pincus: I am sorry I have been too talkative.

CHAIR: No. We very much appreciate the opportunity to ask you the questions that we have asked. Thank you very much, Mr Pincus. Thank you for your time and your thoughtfulness. We wish you all the very best. Thank you very much for the contribution that you made to the commission in your time on the commission. We wish you well.

Mr Pincus: Thank you, Mr Chairman.

ATKINSON, Mr Robert, Commissioner, Queensland Police Service

STEWART, Mr Ian, Assistant Commissioner, Queensland Police Service, Ethical Standards Command

CHAIR: Commissioner Atkinson and Assistant Commissioner Stewart, If it is convenient, we would value any additional supplementary submission that you would make to us for two or three minutes, and then we would like to ask you a number of questions.

Commissioner Atkinson: On behalf of my colleague and I, I acknowledge you, Mr Wilson, as the chair of this committee and the other members of the committee. We thank you for the opportunity to present before you today.

Sir, there probably is not a lot that we can add. Perhaps we should apologise for the lateness of our submission, but to some extent I think that reflects the good working relationship that we have with the Crime and Misconduct Commission and which we value highly. With your leave, I will ask Assistant Commissioner Stewart, who is in charge of our Ethical Standards Command, to comment further if he wishes on the submission.

The only thing that I would reinforce is the concluding comments in terms of the overall importance of the avoidance of slippage. For people like me, and I joined the police department in 1979, the Fitzgerald inquiry, which extended for two years from 1987 to 1989, was a very difficult, sad and unfortunate time. But the organisation now is nothing like it was pre-Fitzgerald. As I have indicated in my submission to you, there is a history within police departments, particularly in democracies in the English-speaking Western World. There are many examples in the United States where there have been corruption inquiries and reform within a police department, and after that there has been a period of slippage which has led to further corruption and a further inquiry. Whilst we are in good shape, I think it is eternal vigilance. We have to do everything we can to guard against that slippage, and the CMC is invaluable in that regard.

From a personal perspective, obviously with 9,200 police, from time to time incidents happen that involve allegations that police have acted improperly. It is a great level of support to me and one that is entirely credible to discuss those matters with Mr Needham and ask him—and he is always most supportive—that the CMC overview the investigation by the Ethical Standards Command into the incident. I think that provides a significant level of public confidence. That is the reality; it is not just rhetoric.

I also think it is probably fair to comment that from time to time we have differences of opinion, but I see that as a healthy thing. If we always agreed on everything, that would cause you and your committee discomfort. I think that it is a healthy thing to have a difference of opinion from time to time. I would say that, on the overall scale of the number of matters that are dealt with by both organisations, that would be a very small proportion. I invite Assistant Commissioner Stewart to add anything.

Assistant Commissioner Stewart: No, other than to say that I am very happy to be here to try to assist the committee with any of the issues that it wishes to raise.

CHAIR: Thank you. Can we go to the issue of slippage. I know that you speak at every opportunity to keep public awareness high about the cycle that you describe on page six of corruption, reform, slippage and corruption. Could I ask you, Commissioner, in your experience and your knowledge of what has happened in police services in other parts of the world, what are the indicators of slippage? How do we know, other than looking behind us, when we are in a period of potential slippage?

Commissioner Atkinson: That is a very good question and I will do my best to answer it. I think that transparency and openness in a police department is terribly important in that regard. I think that there are things that have happened in the police department in recent times that are very healthy. Whilst the purpose of those things that have occurred is not to avoid corruption, indirectly I think they contribute. One example is the police liaison officer scheme. We have police liaison officers mainly from Aboriginal and Torres Strait Islander communities in many places throughout Queensland. That scheme has expanded significantly. It includes police liaison officers from many other ethnic backgrounds: Vietnamese, Chinese and Sudanese. Recently it expanded, which I thought was a wonderful innovation, to go beyond being from an ethnic background and we employed two people specifically from a religious perspective: from the Muslim community, the Islamic community. One of those officers has since decided to join the police department as a sworn officer and is currently undergoing training at the academy. That is very positive. We have volunteers in policing; people who work at police stations. I think that is one aspect.

The other I think is openness with the media. One of the things that I have endeavoured to do when we get things wrong is simply go public on it and let people know that we have got it wrong. That hurts at the time but I think it is important. I think clearly the community are far more comfortable today in complaining. In fact, some would hold the view that we have a society that perhaps complains too much. Nonetheless, I think people are very comfortable with complaining about things today, and between the police department and the CMC there are two vehicles available for them to complain to. Obviously if anyone feels that by complaining to the police department about something that has happened within the police department they may not have a fair hearing or that the matter may not be progressed, then clearly the avenue is open for them to go independently and separately to the CMC. I think there is probably a raft of other bodies, too: the Ombudsman and other areas as well.

It is eternal vigilance. Probably one of the most important things is the training of police officers and the exposures that they have in their first year or so of service. Those things are terribly important. We are moving into an interesting era in that regard. in my view, the greatest challenge facing policing in Queensland is going to be, and is now almost, recruitment and retention. What is happening, it would seem, is that as I guess my generation, the baby boomer generation, are starting to retire, that significant large group of the population who are moving into retirement are not being replaced by an equally large group behind them in terms of the population dynamic. The other thing that is happening is well established now and that is that the standards are higher to join the police department as a police officer. The sorts of qualifications we are looking for are equally being sought by many other employers. We are in a very competitive market. There is a view that there are going to be more jobs for fewer people in that market.

What is happening across Australia is interesting. In Western Australia they cannot recruit enough police from their home state and recently brought in 180 from England and Ireland. In South Australia the same has occurred; they have brought in 80 from England. In New Zealand the same thing has occurred. They cannot get police to go to Auckland so they have brought in 80 from England. New South Wales police are actively advertising in the *Queensland Police Union Journal* encouraging Queensland police officers to join the New South Wales police. The Federal Police are also actively trying to recruit our officers. We are a very competitive market. It will be important, as we explore avenues to ensure that our recruitment in Queensland maintains our numbers, that we do not again in any sense reduce, I guess, the ethical training and quality of the people that we are employing. I invite Assistant Commissioner Stewart to comment on that issue as well; it is a very important one.

Assistant Commissioner Stewart: I think there are some other indicators that would show up very quickly with the system of complaints that we have. The commissioner mentioned that there are a number of bodies in Queensland that people can go to. They can also go to their parliamentary representatives. They can go to the Ombudsman and, in fact, the Ombudsman does accept complaints, although it does not deal with them; it passes them on. If we were to see an imbalance between the complaint trends, for instance, if the number of complaints directly to the Queensland Police Service were trending down and yet the CMC were seeing a trend upwards or the Ombudsman or the parliamentary representatives were receiving more and more complaints, then I think we would have reason to be very concerned. It is practical things like that.

Internally within the organisation I would be very, very concerned if there was not clear and unequivocal support for the role of the ESC, not only from the commissioner but the whole of the senior executive group. I think another area which would be very telling, particularly in the role of the ESC, would be if there was slippage in the quality of staff that were assigned to our command and also to the professional practice managers who are sort of outsource members of the command who work in all the regions. If they were undermined in terms of either support or in the quality of person who was doing the job then I would be worried. We do have within our organisation very highly trained and very competent staff within the command. We do have clear and unequivocal support from the whole of the senior executive. So in those regards I think that, whilst we always have to be vigilant, there are clear markers in that regard.

Commissioner Atkinson: I add one last thing to that, even though it hurts us: this year we have had six police prosecuted for drink driving—one every month so far this year. There is a sad but nonetheless positive side, and that is that as these officers are being pulled up by their colleagues they are not being let go. Another measurement is the number of things that happen where police self-report other officers. There is no joy in it but it is a necessary activity and a very important one because part of the pre-Fitzgerald culture, of course, was no matter what happens you never report another police officer for anything.

CHAIR: If that dropped off, that would be an indicator?

Commissioner Atkinson: Yes, it would be, but it is at a fairly sound level, I think, is it not?

Assistant Commissioner Stewart: It is around the high digits, so it is six or seven per cent, around that rate, which is something that has been occurring for a number of years.

CHAIR: Could you elaborate on that? Six or seven per cent of what?

Assistant Commissioner Stewart: Of the total number of complaints that we receive in a year.

CHAIR: Are self-reporting?

Assistant Commissioner Stewart: Yes, are police reporting other police.

Mr HOBBS: Can I make an observation and perhaps invite comment on it. First of all, I agree about the old cycle of corruption, reform, slippage and corruption. We have to make sure that we do not drop back and lose the gains that have been made. You mentioned the training of police officers. In my area and out in the west of Queensland we have a lot of small towns and what we are noticing out there is a change in the attitude of the new police coming out. They cannot mix with the people. Down in the city areas that might not matter, because they can go home and no-one would know who or where they were; they can go to the movies or whatever. In those smaller towns it is just not working. I am worried about the training process. Maybe there is a culture there that they do not mix with people.

I advise you of this because it is something that I have been watching for quite a while and thinking that it could not be happening, but it is. I have been meaning to write to you at some stage about it to make you aware that this is something that is actually happening. There is not the communication there. They do not want to join the P&Cs or the clubs. It must be a terrible life for them. Their wives are in town with them in those small communities in some instances. It is just a bit difficult. Maybe it is in the training.

Commissioner Atkinson: They are important issues. An area that will help indirectly avoid slippage is where the police mix with their local community. I do not subscribe to this view necessarily but there is a view amongst perhaps some people that the current younger generation, in their twenties and thirties, have a different perspective in terms of outlook. I am actually, as I said, not sure about that.

What you have raised is a topic of great internal debate amongst the senior executive of the service. One of the things that we are considering doing to try to address that is to attract more people from the country into the organisation and perhaps provide, as we do currently for Aboriginal and Torres Strait Islander people, a bridging program in terms of the entry standards. If someone who lives at Mitchell would be a good police officer except for perhaps the educational qualification, which is not unreasonable, we would provide them with a six-month program at the academy that we would pay them to attend and then they would bridge the gap and be able to compete. Hopefully they would then go back to the country. That does not always work.

Mr HOBBS: It helps though.

Commissioner Atkinson: Sometimes people from the country would prefer to be stationed at Surfers Paradise and not go back to the country. We are exploring that and I am happy to keep you advised in a separate capacity in relation to that.

Mrs LIZ CUNNINGHAM: We were talking earlier about devolution to the QPS on the investigation of complaints. In your submission you talked about the process whereby the ESC makes a recommendation to initiate a criminal prosecution. Then you went through the process of having the benefit of interviewing the witnesses, that is, an interview history, that they form an opinion as to the credibility and the weight that a court may place on a witness's testimony and other corroborative evidence, and that they also take into account underlying factors identified by the investigation such as the degree of intelligence of a witness, the witness's preparedness to see the matter through to a conclusion, pre-existing relationships with a police officer and criminal convictions of the complainant and so forth and then a decision is made. You have said—

However, despite these differences of opinion on the particular course that an investigation should take, most matters are amicably resolved with a satisfactory outcome for both the Service and the Commission.

I am getting feedback from people who are dissatisfied or concerned about internal, Caesar-judging-Caesar type inquiries: the devolution to the QPS. In your figuring, where is the perception that the community might form added to your decision-making process about prosecution?

Commissioner Atkinson: That is a good question. I would hope that it is an overriding consideration. I believe it would be because, ultimately, the community's confidence in the police department determines the effectiveness of the police department. There are not enough police to keep an eye on every person in Queensland. There are 4 million people and 9,200 police. Laws in a democracy, in my humble view, are only effective because the vast majority of people abide by them.

I was a detective for 20 years and I would be the first to acknowledge that most crime is not solved through some Sherlock Holmes intellectual genius; it is solved because the public give the police information. They will only give the police that information if they have confidence and trust in the police. Community confidence is paramount. I would hope that it is an overriding consideration. Having said that, you will never please everyone. Sometimes you are between a rock and a hard place and it is degrees of losing and it is just how bad you lose. I doubt if you would disagree with me on that.

Mrs LIZ CUNNINGHAM: To extend that question one more step, given that the devolution by the CMC to the QPS for investigation of complaints is increasing, have you seen a diminution of confidence by the community in police investigating themselves? I am a community person, I make a complaint about police and the next thing I know police are investigating themselves. Do you see a diminution in the community confidence in that process?

Commissioner Atkinson: No, I have not. I hope I am realistic about this and accurate. My sense of it—and I try to travel as much as possible and talk to as many people in the community as I can—is that the community in Queensland do have a high level of support for their police and confidence in them. That would include the capacity for us to do that. But I quote a recent example which sadly, I felt, was misreported. Someone took a photograph of a police officer in uniform who was driving a car using a mobile phone. That is an offence for everyone except a member of the Emergency Services. There has been a push in recent years to create national road rules, which I think is a sensible thing; so if you drive anywhere in Australia, the road laws are the same. When that legislation was introduced, there was a strong push in other states—and there would not have been agreement to it otherwise—for Emergency Services to be exempted. So the law, which is a national law, is that everyone who drives a car should not use a mobile phone while they are driving, except for Emergency Service workers, which is police, fire and ambulance, so there is no offence. You cannot be prosecuted if you are a police officer driving a car using a mobile phone under the traffic legislation but, regrettably, that aspect of it just seemed to be lost in the debate.

It was not that we were saying we would not book the officer. If they are speeding without an excuse, they can be booked like anyone else. The point was that the only way it could be dealt with was through the service's internal discipline process. So sometimes the complexity of these things is completely lost. I say this with no criticism of the media, but it seems as though the media sometimes take a very limited view and perspective on things. That is part of the problem, I guess.

Mr ENGLISH: Commissioner, I am going to ask for your opinion because I value it highly. I suspect that the old CJC gave the QPS a lot of support post Fitzgerald in internally reforming and setting up proper Ethical Standards Command strategies; I suspect there was a lot of support given by the CJC through that era and time. Given that we are going down the road of devolution and that the CMC is now overseeing a huge number of UPAs—units of public administration—could devolution happen too quickly? Do you think the CMC is giving those UPAs the support required, given the level of support that the QPS needed post Fitzgerald? I know you are not in a position to answer factually, so I am just asking for an opinion.

Commissioner Atkinson: Unarguably, theoretically I suppose, yes, you can always go too fast. I do not know if that is the case with other departments. What I do know is that a lot of former police are getting jobs in other departments as investigators because of this devolution, so I suppose they would see it as a positive thing.

I guess another perspective would be that—and I say this with the absolute greatest of respect to other departments—there is probably not the significance for departments like the department of primary industries, the department of natural resources or other departments to have that level of public confidence and to have that interaction with the public. Beyond that, regrettably, I do not think I can comment any further. Do you want to add anything?

Assistant Commissioner Stewart: Simply to say that I agree. I think, yes, you could go too fast and not set up the right processes, but I think the track that we are taking and the track that we have taken since 1997 when the ESC in particular was set up in terms of the devolution processes that have been put in place has been a very stepped out and measured approach. I see that the current projects that we are dealing with in looking at further devolution will prepare us properly in terms of processes, audits and compliance issues that will make those steps both valid and effective. So whilst, agreeably, it could be too fast, I do not think we are on that path.

Mr ENGLISH: I actually was not mainly talking about the QPS; I was talking about the interaction between the CMC and other UPAs.

Commissioner Atkinson: I think it is a terribly important thing though, and I think this is the overall intention of the government. The healthiest state is for a department, whatever department it might be, to be able to properly manage its own affairs and have a culture that enables that to happen.

Assistant Commissioner Stewart: My comment was simply to say that perhaps we are a very good example of the process—that is what I was trying to make clear—and that that process could be quite well used by other government agencies.

CHAIR: A number of us are concerned about unintended consequences from the devolution process. One is that presently all but four per cent of official misconduct matters referred to the CMC are referred on to the relevant agencies for direct investigation, subject to whatever form of oversight the CMC might be exercising. So our parliamentary committee, whose statutory obligation is to monitor and oversight the CMC, has its effective jurisdiction reduced to about four per cent of the theoretical maximum. But then we are creating through devolution an accumulating level of oversights that are happening. The CMC oversights the ESC, the ESC is oversighting the regions and the regions may be oversighting the divisions, with complaints of an appropriate level being handled at each level.

The concern I have is that, with that cascading devolution and cascading oversight, the bottom line is that there is a reduced risk of exposure of failure to properly do things. So if you reduce the risk to decision makers of them being exposed when they fail to act on integrity issues, then we are failing. I suppose the concern I have is with the public perception of police investigating police. Whilst in its broad sense it is not well-founded, there may be a kernel of genuine concern there if we actually effectively reduce the risk of exposure of wrongdoing.

Commissioner Atkinson: And you cannot eliminate that. That will always be something we are going to have to be alert to. Could I respectfully suggest though that, on the other hand, there is a criticism that we are too heavy-handed. That is a criticism that is proffered often by the Queensland Police Union of employees, which is sometimes driven by the media. When a police officer is dealt with under our internal discipline process, we can be strongly criticised for being far too heavy-handed.

One example is the incident with the young officer at the Exhibition who got on stage, allegedly under hypnosis, and impersonated Mick Jagger. The police department has been strongly criticised over that, and it has been misreported. There has been no action taken against the young officer at all, and there will not be. But the two sergeants who let the other police who were supposed to be out on patrol sit in and watch that performance, in my view, should be reprimanded, because the police should not be in there watching that. The sergeant who had supervisory responsibility for that young officer should never have allowed him to get up on stage. Nothing has or will happen to the young officer, but we have copped a lot of criticism over that for being too heavy-handed. That criticism has even been that we should encourage such activity, because it is good for the community. Whichever way you go with this, you are probably going to get criticised. We have to make sure that we avoid the risk that you quite rightly point out as much as possible.

CHAIR: Can I ask a follow-up question of you, Assistant Commissioner. As I see it in broad terms, within the QPS, the ESC has become the CMC for most matters. I will put it differently: the ESC performs within the service, in general terms, the same role that the CMC performs outside the QPS but over the whole Public Service. So the primary vehicle for pursuing investigations within the Police Service is now the ESC. Is that a fair way to look at it?

Assistant Commissioner Stewart: Certainly you could take that view. We do not undertake all of the investigations, as you would well appreciate.

CHAIR: You delegate them yourself within the structure.

Assistant Commissioner Stewart: We do, but we will take on matters of cross-regional importance where, for instance, something happens which involves officers from a number of areas. It would fall to my investigators to actually undertake the investigation of a serious matter such as that. My investigators will attend deaths in custody and usually take a primary role in the investigation of those matters.

So there are parallels between the CMC and the role of the ESC, yes, but I think there must be an independent group—as far as independence can go with any organisation. No doubt you are aware that I am one of the only two ACs within the organisation who answer directly to the commissioner. I do not have to answer to anyone else but the CEO. That supports the level of independence that is necessary for the Ethical Standards Command to do their job.

CHAIR: Does your command have the ability—and, if you do, do you use it—to instigate what I would call investigations without notice?

Assistant Commissioner Stewart: Yes.

CHAIR: Of primary investigations that are being conducted at a regional level?

Assistant Commissioner Stewart: That could occur, yes.

CHAIR: Does it happen?

Assistant Commissioner Stewart: If I can just clarify: you are saying that an internal investigation would be underway?

CHAIR: Yes, being delegated down to the regional level.

Assistant Commissioner Stewart: It does occur, but it usually occurs fairly early in the investigation. A good example of that is recently there was a vehicle pursuit at Proserpine where an 82-year-old lady died as a result of the fleeing vehicle running into her vehicle. The original investigation started within the region, and an inspector from the Mackay district was allocated to undertake that investigation. But, for a number of reasons, which included the concept of having some distance between the district and the investigation, I was able to put two of my people into that investigation and they in fact took it over.

Commissioner Atkinson: Could I add something too. I do not diminish obviously the risks that are involved with this, but there will always be differences of opinion in terms of what should and should not happen and, as long as they are genuine, I think that is acceptable. But a police officer who was investigating a matter would normally be a sergeant or a senior sergeant—at the very least—and often an inspector. If that officer deliberately tried to cover up circumstances to enable the officers being investigated to avoid proper disciplinary processes, then that officer runs a huge risk. It would be an enormously career damaging move, probably a career ending move, if that came to light, because we would see that as far more serious often than the actual incident being investigated.

CHAIR: How would that situation potentially be exposed to someone at the ESC level, for example?

Commissioner Atkinson: Again, if the matter involved a member of the public, it would be a member of the public complaining separately about the outcome. It could be through other police officers, it could be through the media, it could be through someone who just becomes aware of it generally. There could be a whole range of things. It may never be exposed and it could be covered up; I am not saying that that possibility would not present itself. My point is simply that an officer engaged in that behaviour deliberately and quite clearly wrongfully runs a very great risk in doing so.

Mr ENGLISH: Do you do random audits? One mechanism for trying to pick up those possibilities is to randomly audit investigations that are done. Is that done?

Commissioner Atkinson: We do do audits.

Assistant Commissioner Stewart: We actually have a team within the Ethical Standards Command within the Internal Investigation Branch that is specifically targeting and auditing particular matters. That is quite separate from the overview process that is undertaken of most serious matters. For instance, last financial year, my Internal Investigation Branch overviewed 138 separate investigations which were actually undertaken out in the region or in other commands. They were more serious matters. As you probably are well aware, we have a process of investigation and a process of reporting those investigations. As I said, there were 138 of those overviews done of the most serious matters.

Mr COPELAND: Commissioner, still on this issue of devolution, regarding the oversight and the audit of the investigations, one of the issues that the committee has worked with the commission on for some years now is making sure that issues of timeliness are addressed. Does the ESC address those

issues to make sure that any investigations are being done in a timely manner? I had a constituent who had a very, very long time to wait before an issue was addressed. I am not saying anything about the outcome, but they were very dissatisfied with the process that they went through. I would hate to see that be a common thing across the state.

Commissioner Atkinson: Again it is a very relevant issue. Again I will ask Assistant Commissioner Stewart to comment but, yes, the ESC do monitor that. We also try to monitor it. We have a process called operational performance review and, through the chair, any of you are welcome to sit in on one of those sessions at any time. It is a concept that is similar to what is referred to in New York as ComStat, where each of the district officers for the 29 districts statewide twice a year undergo a session chaired by myself with the senior executive members, or a brace of senior executive members, where the performance of that district and that district officer is assessed, monitored, discussed and considered. There are a number of dimensions in terms of the performance indicators. One of those is the number of complaints on hand and the time frames for them. As part of that process the district officer is asked: in that district, how many investigations do you have? How many are more than six months old, 12 months old and beyond 12 months and why? We do try to monitor that way. It is a difficult one as well because sometimes to do justice to every one you need to thoroughly investigate the matter, and that can take time.

Mr COPELAND: I guess the other issue is feeding back to the complainant. If they know that there is a detailed investigation going on then they are much happier, but if they continue to not hear anything, which was the case, then they worry that nothing is happening.

Commissioner Atkinson: No, That is absolutely correct.

Assistant Commissioner Stewart: There are probably two things. One is that, for instance, in the last financial year—that was 2004-05—about two-thirds of our complaints were resolved immediately by way of preliminary inquiries that were done very quickly.

The other thing that has been a great bonus to us is having the professional practice managers in place. That process has occurred over a period of a number of years, but every region and command is now covered by a person who has responsibility direct to the AC of that particular region or command for managing the complaints, because once we devolve them obviously we are at arm's length, to some extent, similar to the CMC. By having those people in place the timeliness issue is foremost in their minds, as it is in ours.

Mrs LIZ CUNNINGHAM: We talked earlier with the CMC about dealing with frivolous and vexatious complaints. I wondered whether you have a process of deeming that a police officer has a list of complaints from the same person. How do you deal, firstly, with determining that that complainant has become frivolous and vexatious and, secondly, what are the impediments to you being able to deem a complainant frivolous and vexatious given the very delicate position police officers are in?

Assistant Commissioner Stewart: I will try to answer that as best I can. There are occasions where my staff will come to me with the very circumstances that you describe. At some stage it will come to the point where I would write to that person and advise them that we will scrutinise anything that comes from them very carefully and that we would prefer for them to document any complaint that they have rather than ring up because obviously there are a number of ways that people can complain to us or contact us. It is not something that we do lightly, and I am sure that that would be exactly the same with the CMC. But there are times where, for the sake of the impost that these people have on the system, obviously we take that administrative step.

Mr HOBBS: I notice here in your submission it says—

At times the recommendations of the Ethical Standards Command concerning the criminal prosecution of an officer conflicts with the commission's view.

Are there many times this occurs? I am not going to say any names, but I do recall one case where the CMC, in fact, did recommend that no charges be laid, but I understand it is still with you people now. Do you have many of those?

Assistant Commissioner Stewart: In terms of the overall number of complaints?

Mr HOBBS: Yes.

Assistant Commissioner Stewart: No, very, very few. But, again, I think that that is actually quite positive because we do have those differences of opinion. The CMC has, on at least one recent occasion, come in and taken over a matter where we were recommending basically strong disciplinary action at a very senior level within the organisation. But the CMC's view was that the person should be charged criminally and, in fact, it has taken that step. The outcome of that is yet to be determined.

There are going to be those occasions because we do have different perspectives at times. In fact, the submission actually outlined some of those issues where experienced investigators will have that opportunity, when they are interviewing a particular witness, to gauge their credibility and their ability to persuade a jury, those sorts of things that we do in every investigation that we undertake. I would also say that this sort of touches on something that Mrs Cunningham mentioned before.

One of the questions that we ask ourselves all the time when we are dealing with very serious matters and serious investigations is simply: what would we do if this was a member of the public and not a police officer? How would we deal with this? That is a question that needs to be asked in every one of those matters, and we do that regularly.

Mr HOBBS: How do you actually resolve those issues? Do you just go with the flow?

Assistant Commissioner Stewart: Sorry, in terms of the disagreements?

Mr HOBBS: Yes.

Assistant Commissioner Stewart: For instance, in the one I just mentioned, the CMC stepped in and took the matter over from us, and we still have a difference of opinion.

Mr HOBBS: Are there many cases the other way, though?

Assistant Commissioner Stewart: In terms of us wanting to charge someone?

Mr HOBBS: Yes.

Assistant Commissioner Stewart: We certainly charge people of our own volition; our own people of our own volition. I cannot remember a time when the CMC disagreed with that position.

CHAIR: I am mindful of the time. Could I take the chairman's liberty and ask the final question?

Commissioner Atkinson: We are at your disposal, sir. We are okay for time.

CHAIR: Thank you. Within the Ethical Standards Command, do you track complaints about officers to identify where there might appear to be a pattern of behaviour or a pattern of complaints about particular officers and particular conduct by those officers?

Assistant Commissioner Stewart: Absolutely. There are three areas within the command, as you probably are aware. There is an Internal Investigation Branch, which we have talked about at length. There are two other areas. One is the Ethical Practices Branch, which is a proactive area of the command. It also has an intelligence unit, and its whole job is to look at patterns of behaviour by police officers. Where we have an officer who we believe is at risk, meaning that they are starting to get a particular history of complaints, we will formalise that information to their superior—in other words, to their assistant commissioner—and ask them to review the conduct of the officer, their complaint history and to see what actions may need to be taken. That might mean that the officer might be taken away from operational duties for a period. It may mean some counselling for that officer or some training for the officer. There are a range of processes.

CHAIR: In the case where there is a complaint about certain conduct by a police officer and that conduct is consistent with a pattern of complaints, do you take that pre-existing pattern of complaints into account in determining how you proceed in relation to the particular complaint? Do you follow me?

Assistant Commissioner Stewart: Yes, I do. On occasions, yes, we do, and particularly if they are more serious allegations against the officer and there is a pattern to those allegations or similar types of allegations. On occasions, if there was a particularly serious allegation and we had seen it a number of times, it may even mean that instead of handing that back to a region or a command that that matter would stay within the command. We would investigate it ourselves.

CHAIR: Thank you very much. Thank you, Mr Commissioner and Assistant Commissioner, for your time and your submission. We will certainly give it very serious consideration. Thank you very much.

Commissioner Atkinson: Thank you.

Assistant Commissioner Stewart: Thank you.

CHAIR: Mr Coates has arrived, I believe. Mr Coates, would you like to come to the table?

COATES, Mr Stephen, Barrister

Mr Coates: Thank you.

CHAIR: Thank you very much, Mr Coates, for making your time available to us. We would be happy to receive any additional oral submission that you would like to make for two or three minutes and then proceed to questions, if that is convenient.

Mr Coates: Thank you, Mr Chairman. I do not have any further submission to give you orally. However, I really do need to correct a mistake in the submission that I made to you. Hopefully the submissions you have coincide with the submission that I have. Paragraph 24 begins, 'a striking example'. In the second part of that paragraph beginning 'that any public servant' you will see the word 'tenants'. That should have been 'tenets'.

CHAIR: I will happily accept that typographical error.

Mr Coates: I will blame Microsoft for that.

CHAIR: Thank you.

Mr ENGLISH: Mr Coates, thank you very much for your submission. I have to say that it is very well written, very easily read and understood. I found it a very informative submission. I get the sense, at the end of your submission, that you are comfortable—not happy—with telephone intercept powers given more protection than what is currently allowed under federal legislation, aka the PIM. Would that be a reasonable summary of your position?

Mr Coates: I would not describe it as comfort, but realistically the world and all Australian jurisdictions are moving, or have moved, towards interception. My view is that there ought to be some sort of control and check. In my view, the Public Interest Monitor is probably as good as any. There may well be methods of an even better manner, of course, of keeping a check on how intercepts are used, but it is one concept that seems to work in our jurisdiction in relation to other warrants.

Mr ENGLISH: I am not trying to be rude, but you have a significant history with the PIM in those covert warrants.

Mr Coates: Obviously with a legal background, a journalistic background and a legislative background, I do have, I suppose, insight into how various components of policing agencies work. I am giving parliament a submission, I suppose, using some of the experience I gained from working for an Attorney-General and putting into place legislation.

Mrs LIZ CUNNINGHAM: I read your submission with interest and share many of your concerns. The previous committee recommended TI, but we have not discussed it in any great merit that I can recall. So it is probably a joy yet to be experienced. I am interested, in particular, in your comments that usefulness should not be confused with mere convenience. The short history that I have with the parliament shows that some things sometimes one would regard as extreme powers that are introduced for all of the right reasons eventually track down to the lowest common denominator—if it is effective, use it. How could you see safeguards—this is aside from the PIM and other safeguards in terms of the actual allocation of TI power—being implemented that stopped it just being used as a matter of course and convenience?

Mr Coates: Mrs Cunningham, I would believe that safeguards could be implemented if the safeguarding authorities are possibly and probably independent from the policing agency which is going to do the phone tapping. It appears to me that, even going on this state's policing history where you do not have an agency or an independent agency or an independent watchdog looking over the shoulder, certain agencies sometimes do things incorrectly and have the power to do things incorrectly. They may do that for many reasons—not all of them surreptitious reasons, but sometimes things get out of control. So I suppose independence of a watching authority is really the way to keep a check on how intercepts are used.

CHAIR: Mr Coates, earlier evidence was given from the CMC about the practical operation of the PIM with surveillance devices. It appears that over the years practices have developed within the CMC whereby there is a lot of consultation between the CMC and the PIM in relation to any proposed application for a surveillance warrant to address in anticipation some of the problems the PIM would have with the application and that more so now any concerns the PIM might have are sorted out well before the application is made to the judge for the warrant. Therefore, in effect, what is formally an external checking agency generates an internalising within the organisation of processes that are better than what they would be if you did not have the PIM. I am wondering whether you can think of other ways in which there can be scrutiny and, I suppose, checks and balances at the front end of these covert applications that might come from somewhere other than the PIM. Is there some other way in which we can build in protections that do not involve the PIM or as an alternative to the PIM?

Mr Coates: I had not turned my mind to other methods. It would seem to me that the existence of the PIM working independently is probably one of the best safeguards you could get at this time.

CHAIR: I do not want to ask you for a legal opinion in this question—

Mr Coates: No.

CHAIR: But let us imagine that the formal intervention of the PIM in any TI arrangement is not possible because of constitutional obstacles. Let us assume that that is the case. Are there ways that you can envisage that the PIM could nonetheless still be involved prior to an application being made and therefore prior to the activation of the federal TI legislation?

Mr Coates: I cannot under present legislation. Obviously if, say, there is a joint Commonwealth-state police operation and the Commonwealth have applied for the specific warrants, it is all done under that legislation and the Queensland legislation does not apply. Unless you can convince the Commonwealth, no, I cannot see that the PIM can be involved at that level. It is a loophole.

CHAIR: That is so only if you think that the PIM's involvement after the federal jurisdiction is activated by the making of an application. There may be other ways prior to that point.

Mr Coates: I suppose there could be state legislation requiring Queensland police to inform the PIM. I would think that may cause some problems, though. I have not thought it all out, I am sorry, but I could just see that if this state legislated to ensure that the Queensland police inform the PIM—even if there was a joint Commonwealth-Queensland operation—I can envisage that that would create other problems. You could try it.

CHAIR: We could try all sorts of things.

Mr Coates: You could. I suspect that that would cause other problems.

Mrs LIZ CUNNINGHAM: In your submission you stated that you responded in your original article to statements that police and public servants were getting away with crimes because of a lack of TI, or telephone tapping, ability.

Mr Coates: Yes.

Mrs LIZ CUNNINGHAM: Can you explain why you are sceptical of that statement and whether there is any justification for concern that, in this case, white- and blue-collar crime is occurring because of a lack of TI? Has our justice system been so poor over all of these years without it?

Mr Coates: I cannot answer that except to say I am sceptical because all policing agencies want power.

CHAIR: More power.

Mr Coates: Yes, and that is natural. I of course support them having as much power as they can get but as long as there are checks and balances.

Mr HOBBS: Mr Coates, you gave an interesting example here where you said that in March this year the Chief Commissioner of London's Metropolitan Police, Sir Ian Blair, secretly taped the Attorney-General during a telephone conversation. It would have been an interesting scenario in the next few weeks after that, wouldn't it?

Mr Coates: It was, because I followed the English media on it. I really used that as an example to show that people in authority—and people chosen to be in authority have been chosen because of their skill or their talent—simply because they are in authority, do not always act according to law or appropriately. That is one of the reasons why—

Mr HOBBS: I understand that in Queensland if we had TI powers they would be used only for criminal-type activity. Unless the police commissioner thought that the Attorney-General was up to something very serious, he probably would not be able to do anything.

Mr Coates: I do not suggest our police commissioner would do that. I merely used it as an example of someone in high authority doing something which appeared to be a misuse of power. I do not know that our history has shown that merely because we are Queenslanders we seem to have a better view of the world.

CHAIR: Have you had occasion to acquaint yourself with research overseas about the way in which telephone interception is used, its level of use, and its strength and weaknesses in Europe or North America?

Mr Coates: No, I have not seen this committee's research, although I have looked at some of the American literature, particularly from a legal point of view.

CHAIR: In that American literature, is there any indication of how frequently telephone interception is used as a step of first resort rather than last resort in investigations?

Mr Coates: No, there is not. But I pointed out in my submission that it is important that police do not use merely telephone interception. There are other methods of investigation. If they merely use telephone interception, evidence can fall down. If, for instance, they gathered an intercept and it was ruled inadmissible, the prosecution may fail when, by rights, a prosecution should go ahead. I have advocated that police should use telephone interception if the laws allow it but they also use their other methods of investigation.

CHAIR: Has any of your research shown the level of interception of—what I will call—innocent telephone conversations relative to conversations that are deemed to be of a criminal nature?

Mr Coates: I have read what I would say would be hearsay reports of such occurrences overseas, but I have not studied that particularly well simply because I have been looking at other issues regarding telephone intercepts. I cannot give you the names, but it occurs to me that even photographs from security cameras have been misused from time to time. Really what I am saying is that it is when someone is covertly surveilled that the checks and balances ought to be there, because what they may be doing—and in many cases are doing—can be quite innocent. But for whatever reason photographs can surface and tapes can surface and they can be used out of context.

CHAIR: I am reminded of the *Age* tapes affair of 25 years ago.

Mr Coates: Yes.

CHAIR: It involved the revelation that the Victorian police force had for 25 years been illegally taping certain people contrary to the federal TI act and that they commonly shared their product with the New South Wales police force during the 25-year period.

Mr Coates: Yes. History should not be forgotten, because people do not change in that respect. It is a matter of parliament or the parliaments ensuring that when authorities are allowed to gather telephone intercept material it is not shared around and that it is only used for investigational purposes.

Mrs LIZ CUNNINGHAM: Given your experience with legislative processes and legal processes, you made a comment that the major social and political weakness of telephone tapping is the potential for misuse of recorded conversations. In light of what you have just said and what the chairman has just said, are there sufficient legislative options to safeguard the community? I am not so much worried about the criminals; I am more worried about the people who are inadvertently captured. It happens in listening device placements where an individual's privacy is completely exposed, inadvertently and detrimentally. Is there sufficient legislative power to give them protection?

Mr Coates: Quite possibly the legislative regime could be strengthened. But, again, if there is a protective regime where an independent authority is watching over what tapes are made, what telephones are intercepted, what bugging devices are picking up conversations, then to my mind it seems that there is some protection in preventing some of that material from going out.

Mrs LIZ CUNNINGHAM: So in a given scenario if there were intrusive powers already in existence and the independent oversight body themselves had breached those listening device requirements of the warrant, then the community is extremely exposed in terms of their privacy.

Mr Coates: Yes.

CHAIR: Have you had occasion to look at what I understand are recent amendments to the federal TI act that extend telephone tapping warrants to, for want of a better name, third parties? If, for example, Mr Big, who is involved in organised crime, is the subject of a telephone tapping warrant on his phone or his mobile phones and he contacts his doctor, as I understand it—and I might have it wrong—the new legislation enables the tapping of the doctor's telephone generally, not just in relation to Mr Big's telephone conversation.

Mr Coates: I have looked at the legislation. Perhaps that is a prime example of why, if government believes that such powers are required to investigate crime—certainly in my submission—there needs to be an independent authority to try to prevent the misuse of other materials gathered.

CHAIR: Thank you very much, Mr Coates. Thank you for your time.

Committee adjourned at 5.02 pm