



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

Friday, 7 July 2006

Brisbane

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FRIDAY, 7 JULY 2006

Committee commenced at 9.08 am

CHAIR: Good morning and welcome, ladies and gentlemen. We will commence the second day of our hearing into the operations and activities of the Crime and Misconduct Commission. This morning we have before us representatives from the Local Government Association of Queensland. We are delighted you are able to come. Thank you for your time and your submission. The way in which we normally proceed is to invite those appearing before us to make any additional oral submissions briefly, limited to five minutes, if they so wish and then we will go to questions and answers.

BELL, Councillor Paul, President, Local Government Association of Queensland

HALLAM, Mr Greg, Executive Director, Local Government Association of Queensland

FYNES-CLINTON, Mr Tim, Solicitor, King and Co.

CHAIR: I invite Councillor Bell to make an opening statement.

Councillor Bell: Thank you, Chair. Firstly, I thank the Parliamentary Crime and Misconduct Committee for the opportunity to appear before you. The Local Government Association of Queensland certainly welcomes this opportunity to make an oral submission in furtherance to our written submission, which is before you.

The LGAQ acknowledges and certainly recognises the important role and the useful work of the CMC within our sector of local government. The LGAQ regularly assists the CMC in its work, especially training and prevention activities that are carried out. We also acknowledge the fact that the CMC seeks an active engagement of the LGAQ in being a part of this process. We especially wish to thank Ms Helen Couper in that regard and the arrangements that have been put in place with us and the CMC.

The association's concerns, though, about the performance of the CMC over the last three years I would like to further flesh out and maybe suggest some reforms that could be taken on board. The CMC, we believe, has a lack of specific knowledge and expertise in our sphere of government. There is no-one employed in the CMC who has come from our sphere of government. We urge the state government to increase the CMC's resources to allow them to employ appropriately experienced local government people—people from our sector of government—to improve the timeliness and effectiveness of reviews. For a short time we did have one person from local government assisting the CMC and that person is now back working as a CEO.

The complaints handling process we believe needs to be improved through employing a more systematic approach and through the use of more local government expertise. We believe that there is a bias towards complaints under the existing legislation and we urge the CMC to look at how this could be changed to provide that complainants are obliged to keep the nature and the existence of their complaint confidential pending the finalisation of an investigation and that persons who breach those provisions be dealt with under section 216(3) of the CMA. We believe that that is natural justice for our people.

The LGAQ also requests the state government to amend the CMA to require a sanction be imposed on complainants where the complainant is not further investigated on the grounds that the complaint is frivolous or vexatious. We have over the last six or seven months eight times recorded where people have gone to the CMC and on the same day ran huge media about our people, leaving them totally exposed. These allegations have usually been, in the main, frivolous and vexatious.

The CMC, we believe, needs to refrain from requiring CEOs in our industry to carry out investigations that the CMC chooses not to investigate itself. These matters are really putting a huge onus and pressures on CEOs who are already engaged in a sometimes very fragile political environment. Such matters should alternatively be referred to either the department of local government and planning or the Ombudsman. CEOs are not appropriately trained, resourced or legally empowered to conduct such investigations but they are requested to.

When the CMC determines that complaints are not substantiated by investigations, we believe that the determination should be positively worded to restore the reputation of the person who has been subjected to a complaint. Many times we do not have any reinforcement of the outcomes of a CMC investigation. We also believe that a person who has been the subject of a complaint actually receive from the CMC a report or a decision regarding the complaint before any release or comment is made in the media. Quite often we have heard from our people that the media has rung them for comment on a CMC's outcome and it has not gone the other way around, and that is certainly not natural justice.

We believe that additional effort should be made to fully inform councils of the reasons behind CMC decisions. We believe that to pursue or not to pursue a complaint certainly needs to be reinforced and communicated to a council so that the concerns over any apparent or perceived inconsistencies of approaches or similar complaints are fully understood by local government. We have some conflict and I suppose concerns that in some areas local government has seen certain action taken and in other areas there has not been the same vigour or the same sort of attention given to a complaint. There is no consistency in some areas.

In closing, I want to reiterate that local government supports totally the role of the CMC in its establishment and its processes. However, we strongly submit that the current legislation and the operational framework is substantially biased against elected members and also some senior staff in favour of complainants, many of whom are making complaints which are vexatious and certainly politically motivated and political in nature. This perception is affecting the regard for the CMC and its operations and also our community and the willingness of people in our community to stand up or to put their names forward with regard to public office in our communities. For the sake of all of those, we would certainly request that you remedy the concerns that we are putting forward to you today.

CHAIR: I would like to go to pages 5 and 6 of your written submission and the topic being addressed—referral of complaints to local government CEOs and mayors for investigation. Isn't the LGAQ's position really one of not accepting the essential proposition of the new legislation—and that is that investigations of misconduct ordinarily ought to be conducted back at source?

Mr Hallam: We say this: there are a range of matters—electoral, official misconduct and the like—where the CEO is put in the invidious position where he or she is required to adjudicate, in some cases about councillors. I should determine the nature of those matters. They are not matters of official misconduct but are breaches of the Local Government Act. The CEO has been asked to sit in judgement, effectively, on their elected member body, which is an extraordinary situation. Only last week in the case of the Johnstone shire a CEO was sacked for very similar issues surrounding the investigation of an elected member. It is a very difficult situation—

CHAIR: That itself might raise the suspicion of official misconduct.

Mr Hallam: That is a matter for bodies to look at, Mr Chairman. That is not a lone wolf example. There are other examples.

We say that those sorts of investigations, if it is a breach of the Local Government Act, should be dealt with by the department or, in some cases, if it is more procedural in nature, the Ombudsman. In his submission our president made the point that our people are not trained as lawyers, they have no powers of coercion and, given their other responsibilities, they do not have the resources to conduct those sorts of issues. We say that it is not appropriate for our people to be doing that sort of work. Their situation is different to that of a director-general who has a one-on-one relationship with the minister. Our CEOs have a relationship with the entire council.

I can think of countless examples where there is acrimony between councillors that has led to a complaint being made. If the CMC determines it is not a matter for it to investigate, it comes back to the CEO who is placed between the two councillors.

CHAIR: I would seek some clarity. There seem to be a number of different situations. One is where the complaint of official misconduct is about the conduct of an employee of a local authority.

Mr Hallam: That may well be a circumstance where the CEO could do the work. I accept that.

CHAIR: In that regard, you do not have any difficulty with the present approach of the CMC.

Mr Hallam: Correct.

CHAIR: Even if it involves the investigation of conduct which is potentially in breach of the Local Government Act among other acts.

Mr Hallam: Correct. I still make the observation that they are not trained as lawyers, they have no powers of coercion and they have no privilege in these matters. They are quite exposed.

CHAIR: If someone has lodged a complaint about the CEO, what do you say the CMC should do with that complaint?

Mr Hallam: Obviously, if it is a matter of official misconduct, they would have to deal with it. If it is a matter of a breach of the act by the CEO, it should be a matter for the department.

CHAIR: But certainly not referred back to the CEO who is the subject of the complaint.

Mr Hallam: Correct.

CHAIR: In relation to councillors, including the mayor, what do you say?

Mr Hallam: The department.

CHAIR: Not the CMC?

Mr Hallam: As far as we are aware, if there is any question of official misconduct, the CMC does the investigation itself. If it is a question of a breach of the Local Government Act by the mayor or another councillor, we say that should be a matter for the department, and it should be referred to it and not the CEO.

CHAIR: Going back to the first category where the complaint is about an employee of the local authority other than the CEO, and subject to the qualification you went on to add, you are comfortable with the process of the CMC, subject to their assessment criteria for devolution, handing it back to the local authority to handle, but your concern is that generally the local authorities are not well equipped to do that?

Mr Hallam: Correct.

CHAIR: But is that not their core business as well? You say in the document that investigating complaints by employees of your organisation is actually not the core business of your organisation.

Mr Hallam: With respect, on the matters that are at hand. I have been a CEO of a number of large and small councils, so I can relate my own experience. These are extra duties, additional to what they have to do. If you are in a small shire, you will have three or four people in the office. Those are the entire resources of the organisation. The CEO is the chief bottle washer, cook, handmaiden to the elected members, stock route inspector from time to time. You name it, they do it.

We tend to focus on Brisbane, the Gold Coast or Cairns. That is 20 per cent of the entire system of local government. These people may or may not be qualified, may or may not have any degree whatsoever let alone any training in the principles of law, and they are subject to people who can challenge them on whether they have carried out a particular exercise fairly and appropriately. The CMC would be aware that these issues are not just a matter for the large councils. Most recently, we have had matters at Cloncurry, Julia Creek and Nanango. The CEO does not necessarily have the appropriate training, skills or resources, and they have 101 other things to do at the time.

If you are in Brisbane City, the Gold Coast or Townsville, you will have a designated complaints person. By law everyone has to have a complaints person, but in the larger centres that will be a full-time job, with proper processes and structures in place. The CEO will take legal advice, and may even have lawyers who will be more than competent in that area of the law.

CHAIR: So the issue for the CMC is to take proper account of the capacity of the organisation to actually undertake the investigation that it is proposing to refer back to them, if we are talking presently of a complaint about an employee of the organisation.

Mr Hallam: Correct.

CHAIR: I am happy to be corrected later this morning, but my understanding is that certainly that is what the CMC says it does, because that is the other side of the coin of devolution and that is building capacity. Your point, if I understand it correctly, is that on the issue of capacity they are not making the best decision with some of the matters that they are referring back to you because the organisation does not have the capacity to do it.

Mr Hallam: Correct. I think that has to be an extra consideration, Mr Chairman.

Mr COPELAND: Just continuing on that same line, one of the submissions we received was from Caloundra. They raised this very issue. Is it a matter of size alone, because Caloundra is a fairly sizeable LGA, or is it the nature of local government anyway? You have Brisbane, the Gold Coast and a couple of the very large ones that probably have the capacity, but Caloundra—

Mr Hallam: To some extent I probably differ from my colleague, Gary Storch, the CEO of Caloundra. What he says is correct, and I made the point in my opening ambit, that there is a natural conflict for the CEO, and the relationship between a CEO and a council is different to the one between a director-general and the minister. We do not walk away from that. I suspect that you can have enough Chinese walls, processes and access to skills in the larger councils to make the system work.

Mr HOBBS: I ask this question of any one of the panel. The Local Government Association is a very professional organisation. Obviously there has to have been some trigger for this. You have put in a very good submission. One of your first paragraphs says that it is apparent that a vast majority of the complaints are not substantiated by investigations. What is the main trigger for the submission that you have made to us today?

Councillor Bell: There are a couple of things. Firstly, in our sphere of government we have seen a significant rise in the number of complaints made to the CMC and, correlating to that, a significant reduction in the number of complaints made by the community to the Ombudsman. If you put the two graphs together, you can see that the Ombudsman complaints are sliding down and the CMC complaints are going up. Many people in the community are seeing that this is a new way of taking some sort of vindictive or, in some cases, political action in regards to local government.

The concern that we have is that the CMC and, I think, a lot of people who do not work in local government do not understand the political nature of the council. The council is the ruling body, not the mayor or the CEO. The mayor is not a minister and does not run the arrangements of the council. The councillors who sit around the table hold the vote. Quite often—we have three out of 125 councils—we have a mayor who does not have all the numbers around the table. That is the political reality. If you ask

them, they are putting some concerns or some pressure onto a CEO who has a mayor to deal with on a day-to-day basis in the running operations of the council, but at the table the mayor does not have the numbers, and then we have these vexed political situations and an imbalance. That certainly creates significant tensions, as we have just seen in one council last week. There was a code of conduct arrangement and an investigation by the CEO. The council had the numbers and the mayor did not, and the CEO has been dismissed.

We are just saying that local government works in a complex and different political environment, separate from the state. You need capacity within an organisation to understand that, how that works and how all of that certainly is in train within the state. As I said before, we believe that there needs to be significant input by people with knowledge of local government into the CMC to overcome many of the issues about size and different capacity. And one size does not fit all. You cannot have rules that will fit Bamaga or Boulia and also the Gold Coast. We need to understand that diversity.

Mr Hallam: In part 1 and part 2 of our submission to the Gold Coast CMC inquiry, we talked at length about the culture of complaint that has developed. The CMC is long aware of our view that it is used by people for what are fairly partisan political reasons. I do not mean party political but political in the true sense of the word. Take the media champion, the so-called whistleblower. It is like looking at a glass of water: is it half full or half empty? Someone is a whistleblower and another person is a terrorist who wants to disrupt the system.

We produced something called the *Councillor Handbook*, which I wrote with Stephen Fynes-Clinton, a barrister. We put this together as an advice to councils on how things might work practically when they take office. We really thought that there was a problem emerging at the end of the last term—that is the term that finished in 2004—where people were bigger than the system. What we find is that there are people who do believe that they are bigger than the system. Despite the fact that they might only be a vote of one or have another vote with them on a council, they go completely outside the system and leak confidential information, make complaints and play the political process to the nth degree. They are lionised by the media as being community champions when another view of it would be that they are incredibly disruptive and not working in the community's interest at all.

That is not to say that there should not always be an opportunity for the genuine whistleblower. As Paul said in his submission, the perception, and we think the reality, of the system is that it is loaded in favour of the complainant and against the hardworking people who try to do the right thing and work as a team. Hence the nature of our submission, Mr Hobbs.

Mr HOBBS: The CMC in recent times has made a big effort to talk with councils, in particular at conferences and so forth, to try to explain the processes. It would seem as if a lot of councillors, and maybe council officers, have taken that on board and become very streetwise and actually almost abuse that system, if that is the case. When you consider, as you just said, the Gold Coast or other areas where there are people who perhaps want to work outside the square, it does make it very difficult.

Mr Hallam: I think that is a reasonable observation. There are two ends of the spectrum. Local government is a very broad church and people get elected from all sorts of different backgrounds and educational perspectives. We have praised the CMC in our oral and written submissions for the work it does and we work closely with them. We have spent \$100,000 on new materials to look after people when they get inducted. People have access to training, materials and end-of-the-telephone advice. By agreement with our lawyers, King and Company, if people need to get independent advice they can obtain that advice in a matter of hours. There is no systemic framework reason why they would not. I suspect it is a bit of both: that there are people still struggling with some of these concepts because they come from a background where they have had no exposure or, as you say, there may well be some people who choose to ignore them.

Mrs LIZ CUNNINGHAM: Greg, you said that you could see some difficulties with CEOs investigating elected members. In a medium-sized council, which is my background, I would perceive that the CEO would also have trouble investigating complaints that have been devolved in relation to the engineer, the chief administrative officer or the town-planner if they work as a very close core group. What would you see the resolution of that being?

Mr Hallam: I think you certainly raise an issue that is important. I suspect that as a CEO you have to do some difficult things. I do not doubt that there is conflict and potential problems but I suspect that that is a role a CEO must play if they are subordinate to them, notwithstanding the fact that they may be in a close working relationship. I do think that that is a role they unfortunately have to play and should play.

Mrs LIZ CUNNINGHAM: In relation to the last comments that were made, councillors are a broad group of people, but can I sound a note for those who do perhaps work as renegades on councils: that sometimes new councillors are elected and feel that they have little opportunity to contribute in a council as a councillor who is perhaps isolated and perhaps speak outside of the council chamber because they have not been subsumed by—and I do not mean this to be as offensive as it may sound—the old boys' club. I speak with some authority on that. Some councillors are ostracised because they hold an alternative view—not a wrong view but an alternative view—and they do not always get a hearing in council and that is sometimes when they do resort to external forums. That is not to say that they should be troublemakers. I think the community pick up on whether they constantly do the sky-is-falling call over the time of their term in council and make an adjudication as to whether their calls outside of council are valid or not.

A number of years ago, and I cannot give a quantity because time goes by, the CMC made a ruling that complaints made against councillors by either aspiring councillors or other councillors, particularly in a party political council, in the run-up to an election or during a local government election would not be investigated—presumably unless it was obviously something serious and proven—until after the local government election. Do you think that that had any impact on the number of complaints made politically in that election period?

Councillor Bell: I will ask Greg to run you through those numbers because we have done some pretty thorough research in that area.

Mr Hallam: What we found was that the 1997 election was appalling. The level of complaint, vexatious material, defamatory material and all sorts of abuses of process were such that we sought a conference with the then chairman of the CMC. We agreed we would work cooperatively before the 2000 election. There were processes put in place—I cannot remember all the details—that were known processes; both the CMC chairman and our president at the time spoke very publicly in the community, there was a lot of media around it, and it was made clear that those who sought to gain from this politically would also be losers politically and they would be named. As a consequence, at the 2000 election there was a significant change-around. The 2004 election was difficult: we did not regress to the 1997 standards but it was certainly worse than 2000.

Part of the problem was, as you certainly would recall, there was a clear proximity between our election and the state government's election. We sat down with the senior officers of the CMC only a fortnight ago seeking to ensure that we get back to the 2000 standards and processes for the 2008 election. The CMC has assured us that it will be doing all within its power to do that.

Mr CHOI: Councillor Bell, in your opening statement you state that seemingly there is a lack of understanding of local government on the part of the CMC. Can you give us some examples of what you mean by that and also what solution you are proposing.

Councillor Bell: The proposal that I am putting to you is that the local government frameworks are similar across all local governments. The way in which local governments work is contiguous with regard to the act. It is virtually the size and shape of local government across Queensland that is significantly different and makes local government different. If you go to a council at Boulia and you talk to the CEO who has four staff, he spends three days out of every week filling out compliance forms and arrangements for governments and other people who are after all sorts of requests, grants, subsidies and so forth for government. That is the capacity of the CEO. The mayors of those particular councils are significant political figures locally. They do a lot of work with regard to the citizenship, a lot of school activities and other things that make them very much a political figure. When it comes to the table, under our act the council is the ruling body and will always hold the power of decisions.

What we are saying is that you need to have a very strong understanding of that political environment; the one that the CEO works in and the one that the mayor works in. Quite often the mayor, being very much the political face of the council, might have a differing view from the council itself. When it makes a decision it will be a decision which the mayor and the CEO then have to deal with. It can be a very complex forum in which everybody is working.

What we have seen is that the CMC has, on a number of occasions, referred back to or dealt with things with regard to local government where we believe there is probably not a strong understanding of how our act applies and works on the ground. I might ask Tim Fynes-Clinton to reinforce those comments maybe with regard to the Gold Coast inquiry where we found that there were certain sections of an act referred to in that inquiry which were state government legislation and not local government. There is a totally different reference and meaning between the two spheres of government in Queensland.

We have found that while there is a very good relationship between the LGAQ and the CMC, the CMC's capacity to deal with our sphere of government is certainly not well met by not having members of their staff who are very, very aware of the way in which local government works and the intricacies of our system of government. We did have one person, Fred de Waard, who was working with the CMC for a little while and assisting in these local government matters. Fred is now back as the CEO at Longreach. We do believe that it is about the capacity of the CMC to deal with our sphere of government. It is not there at the moment and we would certainly be seeking that the government gives the CMC the capacity to have people who have a local government background, an understanding and knowledge of our act which is different from the state government act, and allows them then to use those processes in their determinations.

Mr Fynes-Clinton: Briefly, in the LGAQ submission to this committee at pages 39 to 41 we outline three matters that were investigated by the CMC's inquiry into the Gold Coast which we say, with the greatest respect to the CMC, took too much time to deal with. We say that if there were people in the commission who understood the processes of councils' decision making, for example, which those three matters refer to, it may well have shortened the length and complexity of that inquiry which has now concluded.

Mrs LIZ CUNNINGHAM: In your submission you have recommended that the legislation provide that complainants to the CMC have a confidentiality obligation. Would you see that applying to Ombudsman's complaints as well?

Councillor Bell: It is really the CMC's perception within the community that carries significant community and political weight, I suppose, in that regard. What we are saying is this: people are now using the processes of the CMC more and at a greater rate and number than we have ever seen before compared to the Ombudsman. People are tending now to make a complaint to the CMC, whether it is a significant issue or a very, very minor issue. I think we well and truly outlined that in our submission to the CMC inquiry into the Gold Coast.

We had Media Monitors check the last two years and on eight occasions we found that people had made a very significant complaint about a councillor, a council or a staff of council and on the same day as they made the complaint ran a press release.

Mr Hallam: Did television interviews, did newspaper, did radio.

Councillor Bell: 'We've just dobbed this person in to the CMC.' This is outside of the political lead-up to an election or the other arrangements that we have talked about previously in your questioning, Mrs Cunningham. What we are saying is that this is not fair and it puts it out of balance between the complainant and the person who is on the receiving end of the complaint. It puts added pressure on elected members and senior staff of council who are now saying, 'We do not want to work in this environment. We do not want to be a part of this environment where anybody can make a complaint about us and then go straight to the paper the next day.' It certainly will ruin your reputation—put extreme pressure on your reputation. Then it all goes quiet maybe for a great period of time, up to 12 or 18 months. That particular issue is certainly surrounding that particular individual's operations and character, and we think that that is unfair. We think, if you are going to make a complaint to the CMC, that complaint should be in confidence and it certainly should be held in confidence. If people breach that confidence, they themselves should be investigated or there should be some resolve and penalty.

CHAIR: I think you can accept that the difficulty around this issue is well recognised on this side of the table. We know that by five past six that night the damage to the reputation of the public office holder has already happened and probably cannot be fully recovered—arising out of the mere fact of the lodgement of a complaint to the CMC. Do you have a view about another way of addressing this difficult area? You have suggested one way: that is, an obligation of confidentiality on not only a complainant in relation to a public office holder but complainants generally, I understand.

Another way, particularly in relation to public office holders, may be that particular systems or procedures are adopted by the CMC whereby examination of that complaint can be in some sense fast-tracked—I use that expression loosely; I cannot think of a better word to use at the moment—so as to minimise the length of time in which the sword is left hanging out there in the public domain over the neck of the public office holder. There are problems with that too perhaps, but I wonder whether you have any thoughts about how fast or slow the CMC has been in investigating complaints of official misconduct against elected councillors.

Councillor Bell: Our firm view has been that the complainant needs to have certain conditions put upon their opportunity to make those complaints—that is, we think there should be free and open access to the CMC by all people, and that needs to be a continued part of our democracy, but when you utilise that right, you also have to work within a framework. We have looked at all the options, but the only outcome we believe will continue to maintain the confidence of people taking public office is if it is not inferred that they are guilty from day one so their reputation can be maintained within the realms of CMC's arrangements. The only way to do that is to have some very strong deterrents to people who make complaints and then go public. That is the only option we believe is open. That will further build on the confidence of the elected member, and certainly many of our senior officers, that they are able to work within this framework, which is very open, we believe, to public misuse at the moment.

Mr Hallam: I probably take the CMC's side in some of these matters, in that they themselves are subject to attack by other politicians, media commentators and a range of parties for not being thorough enough or for not having discovered something. So they are in the difficult situation of having to be expeditious yet still make sure that every stone is upturned and satisfy the public need to be sure that the system has worked properly. So they are in a cleft-stick situation as well, I suspect. It may well be a resourcing issue. I sat down with them very recently, at their initiation, to try to find ways we can make things happen quicker. So there have been real attempts; it is not as though they have not turned their minds to these things. I do expect by and large it is a resourcing issue but, again, as we have submitted a number of times orally and in writing, if they had local government expertise inside the organisation or access to it by some form of consultancy, that may well mean they could do things more efficaciously and they might get through these things faster.

Mr HOBBS: I have a question to Mr Fynes-Clinton, or perhaps Councillor Bell or Mr Hallam. You say in your submission, 'Confidentiality is clearly appropriate prior to the conclusion of an investigation so that the presumption of innocence in the public's mind is not lost.' Your organisation was very critical of the process of the CMC inquiry into the Gold Coast City Council. This is probably a chance to let it hang out, to a certain degree, so that this committee can understand exactly how you people are feeling in relation to this matter. Can you explain to the committee your first-hand experience of this inquiry and perhaps give examples of where it is not working? If we can see that type of thing, that might be a good opportunity for the committee to fully understand the process.

Mr Fynes-Clinton: First and foremost, as I think all members are aware, the LGAQ was granted leave to appear before that inquiry, so we sat there the whole time and saw the whole inquiry unfold. Our main concern with that inquiry was the fact that there did not appear to be, at least to the parties who were in the inquiry, sufficient disclosure of the basis upon which the allegations arose, or the basis for the inquiry. It appeared, generally speaking, that the inquiry was based on an enormous number of articles appearing in the *Gold Coast Bulletin*. I think it was exhibit 3 to the inquiry—it was one of the very first exhibits—and it was a lever arch folder of about this dimension which had over 100 newspaper articles in it. Counsel assisting the inquiry then proceeded to examine the main witnesses before the inquiry on matters reported in the *Gold Coast Bulletin*. There did not appear to be any independent statements or separate statements from other witnesses which formed the basis for the questions that were coming from counsel assisting. It was the newspaper articles.

Numerous councillors and candidates who gave evidence before the inquiry said on numerous occasions that, when a proposition as reported in the *Bulletin* was put to them, they said, 'Well, I said that, but I said that six months ago,' for example, or 'I never said that' or 'They've quoted me out of context.' So we say that what appeared to be part of the brief for that inquiry—namely, these media articles—seemed to us to be a bit inappropriate.

One of the apparent bases for the inquiry was the dossier lodged by one of the Gold Coast councillors initially with the minister who passed it on to the CMC. That dossier was not tendered in evidence before the inquiry either, which meant that again the basis for the inquiry seemed to be very thin from the LGAQ's perspective, remembering that the LGAQ was not there to defend any individual councillor; it was there observing on behalf of local government in general.

Mr Hallam: I might add, if it is okay: it was certainly a cathartic experience. I sat through every day of the council evidence. I did not listen to all the other evidence from some of the other parties; it was not in our interest. As we indicated elsewhere in the submission, we understand how a perception of bias against elected members and in favour of complainants can arise when, in the case of Mr Young, similar sorts of issues that he had—and Mr Fynes-Clinton might assist me; I cannot recall the particular incident, although I think it might have been about a conflict of interest or a material conflict—

Mr Fynes-Clinton: Material and personal interest.

Mr Hallam:—were dismissed because, for want of another way of describing it, they were pursued with respect to other persons. That certainly was a matter of concern. I know it is a heartfelt belief amongst the councillors in question that the investigation did not properly deal with all the other matters. I understand the CMC's view is that that was not part of their brief, but that does not allay in any way, shape or form our concern or the concern of the elected members who believe that they were unfairly dealt with relative to their colleagues.

Mr ENGLISH: Does your organisation represent councillors or councils?

Mr Hallam: Body corporate, council. So it is a governing mind, whoever that might be. As our president said a moment ago, sometimes that is not the mayor. If it is a 5-6 majority, we represent the majority view, by law.

Mr ENGLISH: I am just concerned that you appear to be overly concerned about the individual reputations of councillors. At times as public officials we are going to cop the kick, but the public perception of the integrity of the overall organisation is much more important, in my opinion, than an individual's perception. When you throw your hand up for public office, it is at that risk. I am just concerned that you are more concerned about the individual over the public perception of the integrity of the organisations as a whole.

Mr Hallam: Can I make the next connection. Every two years, we do \$100,000 worth of community attitude polling, and there is an absolute correlation between disruptive behaviour of a few councillors—and I am not pointing fingers at the Gold Coast; there are a number of them—and that reputation, so there is a connection. What we say is that people who operate outside of the system for their own political benefit should not be rewarded, and effectively they are and there are no sanctions against them at the minute.

I accept what Mrs Cunningham said, that there has to be a right to speak out, but there can never be a right to leak confidential information for self-aggrandisement or to damage the council. What we say is the balance has to be restored. We are not saying that the rights of the individual councillors are greater than the whole—far from it. What we say is that when we have feral councillors—which is not my term but a term our councillor colleagues use—who operate outside the system and seek to bring the system down, then everyone suffers and there is a perception that the system is biased in favour of those persons.

We have been a great supporter of all the reforms since EARC and PEARC. Indeed, I am very proud to say that there would not be a mandatory code of conduct in Queensland if Mr Fynes-Clinton had not developed one that forced the government to take that view. We have advocated for a mandatory code for 20 years.

We have supported and we still support the CMC in a lot of what they do. We are actively out there with them, partnering on the same programs, talking about all the issues that are important in terms of community confidence. We have supported the majority of the CMC's 19 recommendations in respect of the outcomes of the Gold Coast inquiry. I would not want it to be perceived that we are simply there to defend a few, but we see the absolute connection and correlation between disruptive behaviour for personal and political gain with no apparent sanctions against those persons and how that affects the whole system's reputation.

Mr ENGLISH: I will preface this question with some comments. As a former police officer, I have seen the damaging impact of complaints made against police, as well as good friends and teachers in the education system who had complaints made against them to the CMC. A lot of these people are negatively impacted, either in the short term or in the long term, by having a complaint made against them to the CMC. Can you please try to justify why members of local councils should be treated differently to any other officer of a UPA in Queensland?

Mr Hallam: We do not.

Mr ENGLISH: So you are then advocating that this cone of silence should extend to all complaints made to the CMC?

Mr Hallam: I suspect it should, yes, correct. We absolutely support the role of the CMC and the need for the community to believe in its worth. I do not believe having sensational headlines in the *Courier-Mail* or the *Cairns Post* or being on the *7.30 Report* helps in that way.

We have demonstrated without any question through the CMC stage 2 submission to the Gold Coast—we have made reference to it a number of times—that there has been absolute abuse of the process by people who seek to do it for their own personal reasons. There have to be some lines or some level of protection for people in public life. We do not accept that it is fair game for everyone. We do not believe that for a minute. Certainly, they should not be cocooned, nor should our people be cocooned. With regard to people using the system blatantly for political purposes, the end result of which is to diminish the standing of the system of government, it is in no-one's interest for that to be allowed to happen.

Mr ENGLISH: But that is identical to a police officer who gets a completely vexatious complaint made against them. In the eyes of their bosses or, in some cases in the eyes of their peers, their position is diminished. Their career is potentially compromised. So you are happy to extend that cone of silence to all complaints made to the CMC?

Mr Hallam: Repeat that, yes.

Mr HOBBS: Yesterday we had a number of instances where we talked about frivolous and mischievous accusations that are made and how we deal with that process. The CMC have stated that they examine that themselves, but then again often the person who has been accused needs to know that that has happened and have an opportunity to reply. For instance, in the Gold Coast inquiry did the councillors who were investigated get an opportunity to view the dossier that was used as one of the triggers for this process? Did they get a chance to say, 'This is all wrong, wrong, wrong, wrong or right or may be right,' or whatever?

Mr Fynes-Clinton: My recollection—and I do stand to be corrected—is that ultimately we were given a copy of the dossier during the course of the inquiry.

Mr HOBBS: So they had an opportunity then to go through it and make a submission to the CMC to say whether or not all of those cases were frivolous?

Mr Fynes-Clinton: To the extent that counsel assisting sought to rely on it or refer to it, yes, they all were given an opportunity to respond to it.

Mrs LIZ CUNNINGHAM: I just wanted to refer to a recommendation that you made in relation to frivolous and vexatious complaints where you have suggested that it be subjected to a sanction. I would have to express real concern about that for a number of reasons. The test for frivolous or vexatious complaints can be fairly subjective. As Mr Hallam said, local government is a broad church. Some councils accept criticism constructively; others will not tolerate it at all. Given that the complainants have a broad and varied communication ability, my concern with that would be that there would be those with valid concerns who would be constrained from speaking out because of this potential financial impost and there would be those in councils who would use the threat of a fine, which is what it would be viewed as, as a way to diminish examination. Can you see downsides to the financial impost that you are proposing here?

Councillor Bell: We have thought about that and I certainly do not. Those people who are making genuine complaints and have a genuine concern must be fully protected, and in the majority of cases those people are not the people that we see the next day or that day in the media. It is the people who are there for their own benefit—whether it be because of a development, because it is a political process that they are not happy with or a political process that they themselves are getting themselves involved with. They are the ones who are certainly making the complaints and bringing those complaints forward to the media and to the public.

There are already many opportunities for people to have public comment and public discussion about the political process of local government without using a vehicle of government and a vehicle that we need to protect—the CMC—as part of the armoury of being able to totally destroy reputation, and not just reputation of an individual but certainly reputation of a group of people who are coming together in the roots of local governance and local government. I suppose it is a balance we are going to have to take forward in thinking about this issue with regard to councils because we are not seeing enough community people putting their hands up at elections. I think Mr Hobbs will know that there were a number of councils in his area where there were not enough people putting their names up for the position of elected members as there were positions vacant.

Mr Hallam: A record number this time around.

Councillor Bell: Yes, and a record number this time around. We are tracking some of this to the processes that are available to people to take away a personal reputation without having any consequence—without having any place to answer—but to purely put in a submission and go straight to the media. That needs to be the test. Let it be tested in law; let it be tested, inquired and processed. All of the real important and due processes we see are not predicated or required by the people making those submissions who go to the media; they are the areas where there is due process required for the CMC to investigate. Those are dealt with within the realms of the local government, individual councillors and the CMC and not in the media. What we are saying, I suppose, is that we need to refine the way in which we can determine and identify those people who are making a vexatious and a very frivolous complaint and having that done in a process of taking out reputation.

Mr Hallam: I might answer Mrs Cunningham's issue in this way, and I am sure about the facts because the CMC have told them to me in very recent times. There has never been a prosecution of anyone ever for bringing a frivolous and vexatious matter against a council whereas there have been for policemen, as I understand it. We have no problems with people—indeed, we teach them and educate them through materials, training books, videos and induction courses we run for elected members in their council setting one to one that they have lots of rights. They have rights around grievance. We advise them to speak to the CEO in the first instance if they have a problem and if that does not resolve it to raise it with the mayor. We teach them that they can go to the council and bring it up in general business and they have a right to be heard.

What we say to them, though, is that they also have responsibilities. If someone tells you something down the pub or a disgruntled staff member says something is going on here, that is not justification to go to the CMC or the media—or both—on the same day. We tell them that they have a responsibility to properly inform themselves and to go through all of those situations. We say to them, 'If you've exhausted all of those options, if you believe that you've been thwarted at every turn improperly, then you have that right.' We tell them that in the interests of the organisation, your working relationship with other people and in fairness to the people who are subject to the complaint they have to at least have some basis for their complaint and have at least exhausted all of the possibilities that do exist before they launch off and say someone is involved in official misconduct or some criminal offence.

Mr CHOI: I can understand the call by the LGAQ that when an elected representative has been accused of wrongdoing the matter be treated in confidence by the CMC. The example of the Gold Coast City Council was cited and members on this table also acknowledge the difficulties that there are. But I am trying to reconcile within my own mind—and I would not mind some comments from you—the need to protect the notion of presumption of innocence until proven guilty versus the public interest to know. If I use the Gold Coast City Council as an example, the matters are in the open. I accept the fact that perhaps the reason for having that inquiry was based on newspaper reports, but nonetheless the matter has been 'exposed', whether negatively or positively, in the media. There is the issue of public interest, the need for the public to know, and then the outcome being published. How do you reconcile that in your mind?

Mr Hallam: That is the \$64 question, isn't it?

CHAIR: That is why we thought we would ask you.

Mr Hallam: Good one. We just say again that we think at the minute the line falls unfairly against the elected member in favour of the complainant. It is trying to find the equilibrium, and we have suggested in a number of ways how you achieve that. I do not know if we can say more than that. Can I just give you an example, and I come back to the Gold Coast because it is a bit dear to our hearts. As Mr Needham noted, we have some passion about these things. If you asked someone in the community today if the Gold Coast City Council was corrupt, they would tell you yes. But what they would not be able to tell you—and as our lawyers reported to us and to the media at the conclusion of the inquiry—was that there was not one single offence found, let alone subject for prosecution, once that council took office. If you asked them, the whole community would believe that the property developers were in there in each and every decision. It was not reported, for instance, that despite all of the nonsense about people being in bed with developers, the council was being sued by the developers around development contribution charges.

Therein lies our problem: you could have such a mismatch between the reality of the facts that there was not one offence that did occur since the council took office in 2004 and the public perception that they were rotten to the core and that the developers had sway in every decision. That is the problem we face. That is the fundamental issue. In my more lucid moments I often wonder about it. How could we have done it better? There is no doubt, because of where we had got to, that the government and the CMC had to have an inquiry because of the perception in the community. But the difficulty—and I wrestle with this all of the time—is the perception and the reality.

I accept that there were some issues that happened that were subject to further investigation and potentially prosecution before the election or during the election proper. But, if we are talking about the actual council, we went through 35,000 development assessments. We went through them in great detail. The reality was that only two per cent went to the council table. Of that two per cent, nine out of 10 went against the developer. Would the community believe that? Absolutely not. Therein lies the difficulty: how do we ensure that there is some fair and balanced—I will not use the word 'reporting'—examination and conclusions in respect of the system, whereas, as I said, if you asked the man and woman in the street on Surfers Paradise they would have a wholly different view?

CHAIR: Thank you, Mr Hallam. We are going to have to wrap this session up, but can I claim chairman's indulgence and just ask one brief question. It will be a brief question. Maybe the answer will be brief as well. Has consideration ever been given between LGAQ and CMC about the potential for secondment from LGAQ or large local authorities to the CMC? I understand that at some time in the past that used to happen and may still happen between the CMC and major government departments.

Mr Hallam: The answer is yes and yes. We have a system underway. I spoke to Ms Couper and Mr Lambrides two weeks ago. We are going to see if we can do that even within the LGAQ or across some of the larger councils. That is actively on our agenda.

CHAIR: Thank you very much for coming this morning. We have very much appreciated your ideas, your suggestions and your points of view. We will certainly give them very careful consideration in the finalisation of our report. Thank you very much.

Councillor Bell: Thank you very much. We wish you all of the best with your deliberations and are looking forward to the report.

CHAIR: Thank you.

BEVAN, Mr David, Queensland Ombudsman

CHAIR: Good morning, ladies and gentlemen, and good morning, Mr Bevan. Thank you for appearing before us today. Welcome. Mr Bevan, we would be happy to hear a brief oral submission from you—limited to, say, five minutes—to supplement your written submission and then we would like to proceed to questions and answers.

Mr Bevan: Certainly. Thank you for the invitation to attend and to provide a submission. My written submission is in two parts. The first deals with the liaison between the CMC and the Ombudsman's office. Obviously, there is quite an amount of overlap in complaints received by the two organisations. The term 'maladministration' is a very wide one. It relates to any unfair, unlawful or unreasonable conduct or even conduct that is wrong. So potentially all official misconduct is also maladministration, but not vice versa. So it is important that our two organisations liaise closely in the assessment of complaints and they are doing that at the moment.

We also liaise in other areas where there is an opportunity to do so. One of the meetings which we both attend—and which I did not mention in the submission; I apologise for that—the Ombudsman and the CMC are both members of a group of independent complaint agencies that meet three or four times a year to discuss joint communication strategies and corporate service initiatives. Recently the CMC was running some training on project management and some of my officers attended. One of the other exercises we have engaged in with that committee was to have a launch of a joint brochure for all of the independent complaint agencies in my office. The brochure is just a brief summary of the role and how to contact each of the relevant complaint agencies. That was launched at the Greek Club a couple of years ago. We also had a special launch for the Chinese community some time ago and we are currently working on promoting our respective roles to the Vietnamese community.

Even though I think there is a good relationship, there was recently a strategic review of my office. Under the Ombudsman Act, there has to be a review every five years. That was undertaken by an independent consultant, former Under Treasurer Mr Henry Smerdon, and he has recommended that the CMC and I consider entering into an MOU to document the arrangements between our organisations. Again, I do not think there is any pressing need for that, but I certainly do not have any objection to it. I will be discussing that further with the chairperson.

In relation to the second part of my submission on whistleblowers—and that follows on from a submission I made to the various health inquiries last year—I need to make a brief correction to one aspect of that submission. In the first two paragraphs I mention that there was a committee which was appointed to review the whistleblower scheme in Queensland. The review, in fact, has been conducted by the Office of Public Service Merit and Equity. In responding to the committee's recommendation for a full review of whistleblower protection in Queensland, the Queensland government said that it would conduct a whole-of-government review of the experience of public sector agencies in relation to the operation of the act and make any necessary comments. For the purpose of the OPSME, which conducted that review, it has established a reference committee. Both the CMC and ourselves have been represented on that particular committee, as has the Department of Premier and Cabinet. Therefore, it follows that the report of that review will not necessarily represent all of the views of my office or of the CMC.

As you are aware, I made a submission initially to the Morris inquiry and then subsequently to the Davies inquiry that the Ombudsman's office should have an enhanced role in monitoring whistleblower protection in Queensland. Just as the CMC does in respect of public interest disclosures involving official misconduct, I proposed that the Ombudsman's office would monitor public interest disclosures involving maladministration. That particular recommendation was supported by Mr Davies in his final report. I have reiterated that proposal to the OPSME and the chairperson of the CMC has supported that proposal, but I am aware that the OPSME does not support that particular proposal.

One area where I could see improvement in the whistleblower scheme in Queensland is for the OPSME, with the assistance of my office and the CMC, to prepare guidelines for the advice of agencies on how they should administer their responsibilities under the act. That is certainly one issue that has been looked at by the reference group and by the OPSME.

Finally, in these opening comments, I should reiterate what I said in my submission to those health inquiries, which is that my office could not perform this monitoring role without appropriate funding to do so. This was recognised in the recent strategic review of my office, which recommended that I keep Treasury apprised of any funding implications arising from the implementation of the Davies report.

CHAIR: Thank you, Mr Bevan. Can I take you to an issue that was raised by the LGA representatives this morning? I do not know that you were in the room at the early stage so you may not have heard this yourself. They were saying to us that in the recent past they have noticed a steady decline in the number of complaints about local government going to the Ombudsman and a steady increase in those complaints going to the CMC. The inference is that complaints that formerly might have gone to the Ombudsman, particularly about the activities of councillors, are now going to the CMC and inappropriately so. Firstly, are you aware of that trend? Secondly, in the meetings that you have with the CMC, do you try to address that sort of forum shopping issue?

Mr Bevan: I can comment in respect of the complaint numbers in respect of my organisation, but I have not seen the break-up in respect of the CMC for complaints about local government. Certainly, not the financial year immediately past but the one before that I saw quite a significant reduction in complaints about local governments. Again, I cannot say whether there was a commensurate rise in complaints to the CMC. However, I would be surprised if it was the case—if that was the explanation for the reduction in complaints to our office—in that my officers are in contact with the CMC at least weekly. They would have reported to me if there were significant numbers of matters the CMC was raising with them which they thought were more appropriately the province of my office. There are some, but I have not been advised that it is to such an extent as to support what the LGAQ has said.

We have been doing a lot of work with local governments to help them improve the way they themselves handle complaints. Properly that category of complaints would be more the sorts of complaints which would come to my office rather than to the CMC. We have a project called the Complaints Management Project where we have worked with 11 state and local government agencies to develop best practice complaint models. The results of the first part of that project were reported in a report I tendered to parliament last year through the Speaker. We are now in the second phase of that project where we are encouraging all state and local government agencies to implement complaint systems which meet certain recognised standards. You would also be aware that in March of this year local governments were required by amendments to the Local Government Act to put in place complaints systems which met certain criteria stipulated in the act.

Also, we have been working with some councils to improve their front-line decision making. From 1 July last year we have been running a program called the Good Decisions training program. In fact, the Gold Coast City Council has been the recipient of, I think, 13 of those training sessions. We have trained more than 300 of its officers in the course of that program. It is to be hoped that that sort of initiative would also lead to a reduction in complaints, being received by my office at least, about local governments and other agencies to which we provide this training.

CHAIR: Aside from the detail, the thrust of the LGA point is that there are numbers of complaints going to the CMC now which more properly ought to go to the Ombudsman because they are maladministration; they are not really official misconduct. At the same time publicity is sought by the complainant about the fact that they have gone to the CMC. In the meetings that you have regularly with the CMC and by reference to your standing arrangements, do you try to isolate matters that might have gone to the CMC that more appropriately should have gone to the Ombudsman and then you redirect them?

Mr Bevan: Yes, we certainly do that, but we do not necessarily look at whether there is some underlying cause.

CHAIR: I appreciate that.

Mr Bevan: Yes. It has not come to our attention to such an extent as to indicate that there is a problem there. Certainly, there have been a couple of matters in recent times in the media in relation to local government. In some of those cases we are investigating; in other cases the CMC is investigating. In some cases we are both investigating. Where that happens we make sure that we exchange information as we are entitled to do under our respective legislation so that we can assist each other with our respective inquiries.

CHAIR: Thank you.

Mr Bevan: My officers meet, I think, monthly, but also they are in contact at least weekly—probably more than once weekly—to discuss particular matters that have come in which they might see as more appropriately being dealt with by the other agency.

Mr HOBBS: It would appear that some of the people making complaints are more interested in the media outcome of making the complaint rather than resolving the complaint. Are you happy with the progress of complaints that come to you about councils? Do you have any idea roughly how many there are likely to be a year? Are you happy with the time lines that you have with those and the general process of complaints?

Mr Bevan: Just off the top of my head, for the last financial year we received approximately 7,500 complaints. About a quarter of those would have been about local government. That percentage has remained fairly stable over the last number of years. In relation to those complaints from local government, in about a third of the cases we refer the matters back to the respective local governments to deal with in that the complainants have not tried to resolve their complaint with their particular local council. We do that also in respect to complaints about state government agencies. We cannot investigate all the matters that we receive, but, obviously, we invite complainants to come back to us in the event that they are dissatisfied with the outcome of the complaint when it has been dealt with by the particular council.

In respect to the time frames of our own investigations, I am fairly happy with that. Certainly, the strategic review noted that there had been considerable improvement over a number of years in our response to complaints. It is something that Mrs Cunningham would have some knowledge of from her time in her previous committee—the committee to which I report, the Legal, Constitutional and Administrative Review Committee. In general terms, in regard to our time frames for dealing with those complaints, yes, I am fairly satisfied with that.

Mr COPELAND: Mr Bevan, in your opening statement you said that there was one person or someone who did not agree with the expanded role for you oversighting whistleblowers who are dismissed.

Mr Bevan: I did not say a person; I said the Office of Public Service Merit and Equity, which is conducting the review of the whistleblower scheme in Queensland. It does not agree that my office should be given an enhanced role in monitoring public interest disclosures that involve maladministration as opposed to official misconduct.

Mr COPELAND: Secondly, in relation to those matters that you refer back to local governments because there has been no attempt at resolution at that level, what percentage would then subsequently come back to your office following that process?

Mr Bevan: A relatively small percentage—something under 10 per cent, I believe. We did survey this particular group of complainants a couple of years ago to identify what was happening to them. We found that in quite a few cases the complainants were not following our advice to go to the council at all. We looked at reasons why that was the case and also at ways in which we could assist complainants to take their issue up with a local council or a state government body, whether that be in some cases—we could not do this in all cases—by making contact on their behalf or in other cases by providing them with, in effect, a draft letter which said words to the effect, ‘I have discussed the matter with the Queensland Ombudsman who has advised that in the first instance I should raise it with you and then come back to the Ombudsman if I remain dissatisfied.’

CHAIR: When matters are referred back to local government or to any state government department for resolution, how does the Ombudsman’s office satisfy itself that the matter that has been referred back to the department has actually been appropriately resolved, whether or not to the satisfaction of the parties?

Mr Bevan: In most cases, our practice has been to leave that to the complainant. We certainly give the complainant advice, whether they are making the complaint over the phone or whether they have made the complaint to us in writing in which case we write back to them. In both cases we explain very clearly why we are suggesting that they take their issue up with the agency—that the agency should be given the opportunity to resolve the issue in the first instance but that if they remained dissatisfied then they should come back to us. We do leave that in the hands of the complainant. But it is something that we are looking at arising from the strategic review—whether we should be more active in terms of following up. At least on some matters we would have to set the criteria to isolate certain matters which we feel are of more significance and which would warrant our following up with the agency on what their response has been to the complaint that was made.

CHAIR: Is there any relatively senior person in each department or agency who is required to report back to you about the resolution or otherwise of those matters that you have referred to the department for resolution?

Mr Bevan: No, not unless we make that specific request. We have liaison officers in most of the agencies, but that is more for the purpose of helping with our own investigations—matters we ourselves take up for investigation. But it is something which we are currently looking at extending so that we do maintain closer oversight of that body of complaints which are dealt with, or at least we say to complainants that they should take it up with the agency.

CHAIR: You spoke this morning about a committee of independent complaint agencies. I am wondering whether that committee addresses a couple of issues that I think arise certainly in the CMC setting—and I am assuming that the CMC is part of that committee.

Mr Bevan: It is. That is correct.

CHAIR: The first issue is forum shopping by complainants. The second issue is the other side of the coin—what I would call the issue of best forum referral. There are some complainants who move from agency to agency—and I saw this when I was on LCARC as well, oversighting the Ombudsman. No-one has really guided the complainant to what the best forum is to examine the matter. The particular agency to whom they most recently complained simply answers whether or not they are an appropriate agency. The third issue is whether there is any arrangement between the agencies whereby there is something of the nature of case management of what are admittedly a small number of complaints in this category that are multifaceted and multiagency. The fourth issue is whether there is any overarching referral system or clearing house that tries to bring resolution to these often complex multifaceted matters that probably constitute five per cent of complaints but perhaps, if a whole-of-government view is taken, might consume 20 or 30 per cent of the costs associated with complaint handling.

Mr Bevan: Firstly, in relation to forum shopping, yes, we do see some indication of that from time to time. We try to deal with that by way of liaison with the other agencies and with the CMC. I have mentioned the arrangements we have there. We also have a protocol in place with the Commissioner for Children and Young People and Child Guardian. We have fairly close contact with what was the Health Rights Commission, now the Health Quality and Complaints Commission. I had a meeting with the new commissioner yesterday to discuss ongoing liaison arrangements there.

In relation to best forum referral, I suppose our office would be the closest thing to being a clearing house in that we have the broadest jurisdiction. Many of the complaints which are dealt with by other agencies also meet that definition of maladministration, as I mentioned previously with official misconduct. Many complaints dealt with, for example, by the Health Quality and Complaints Commission and by the children's commission would also involve maladministration and meet that definition. Our approach is that, if there is a specialist agency which investigates that type of complaint, our initial response at least would be to refer the matter to that particular agency.

In relation to multifaceted matters, in my submission to the health inquiries—our submission was initially made to the Morris inquiry and we provided a copy to the Davies inquiry—was a case study of a particular case we had investigated because of what we saw as an uncoordinated approach to the investigation of the issues involved by a range of agencies which had complaint responsibilities in the health service area. In that case it was the Health Rights Commission, the Medical Board, the Queensland Nursing Council and also the State Coroner, with agencies saying we cannot investigate until the other agency investigates. Our approach was to look at the whole scheme and to make recommendations for a more coordinated approach. I am not sure if I missed any of the issues.

CHAIR: I think the fourth one combines with what you have just spoken about and that was whether there is any overarching referral system. In effect, I gather the Ombudsman plays that role in a de facto capacity.

Mr Bevan: Yes, I think that is true.

CHAIR: Do you wish to say anything further?

Mr Bevan: No.

CHAIR: Thank you very much. We have appreciated you coming this morning.

Proceedings suspended from 10.40 am to 10.59 am

CORK, Ms Julie, Commissioner, Crime and Misconduct Commission

DRUMMOND, Mr Doug, Commissioner, Crime and Misconduct Commission

GOW, Dr David, Commissioner, Crime and Misconduct Commission

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

LAMBRIDES, Mr Stephen, Assistant Commissioner, Misconduct, Crime and Misconduct Commission

NEEDHAM, Mr Robert, Chairperson, Crime and Misconduct Commission

CHAIR: Good morning and welcome, ladies and gentlemen. We resume with the CMC and Mr Needham as chair. I extend to all of the commissioners the invitation to sit at the front table, along with the chairman, and welcome any contributions any of you would like to make this morning.

Mr Needham: We will put in a written response dealing with the various submissions that were made. If I could perhaps touch on a couple of matters. A number of matters in response have already arisen yesterday as we went through the various questions that were asked. So, where appropriate, those matters were discussed and dealt with.

CHAIR: I apologise for forgetting to announce that Mr Hobbs gives his apology for this session. He had transport arrangements to attend to otherwise he cannot get back to his electorate within a reasonable time. He is sorry that he cannot be here but he will certainly catch up with us and your written submission.

Mr Needham: If I can touch on a couple of matters that were raised in written submissions and just mention them in case there are any aspects of them that the committee wishes to discuss. The question was raised in one of the submissions—it was the Director-General of the Department of Industrial Relations—about disciplinary action being able to be maintained against an officer after he or she has resigned. That is a matter that was looked at by this committee a couple of reviews ago. It was dealt with in some detail in report No. 55 of March 2001 at pages 49 through to 64.

The issue raised was a matter that was asked for by the CJC and it basically dealt with a problem that the CJC had in not being able to refer details of investigations to departments and in particular to the department of education, say, where a teacher had been investigated for sexual misconduct and had resigned before the matter was dealt with. Presumably it would have to be sexual misconduct less than the criminal charge and the difficulty then that could arise if that teacher reapplied to join the department or applied to join a private school which checked with the department but the department would have no details of the allegations. That matter has been of continuing concern, but we feel that it is better addressed in a different way.

We have taken some steps coincidentally not arising out of this—though in some ways it does seem to be very coincidental. I recently signed a letter to the Attorney-General requesting that she give consideration to an amendment to be made to the Criminal Law (Sexual Offences) Act 1978. If that amendment were made to include us in the category of organisations that can disseminate material or information about sexual offences that have been investigated, that would enable us to furnish the information to agencies such as Education Queensland to enable those agencies that have a legitimate reason for having that information to obtain it.

I feel personally—and we have discussed this in the commission—that it is better to handle it that way rather than go through the more cumbersome process of being able to prosecute people who have left. Even in those circumstances, if the person perhaps for one reason or another was found not guilty at that stage, there might still be some aspects of the entire circumstances that would be best in the hands of the department anyway. If we get that amendment, then the problem that was raised by the CJC back in 2001 will disappear.

The other matter that I would mention is the matter that was discussed this morning and in the LGAQ submission. It is about the difficulty for councils or CEOs of councils in investigating allegations against councillors. We acknowledge the difficulty but, hopefully, in the future it should not be too much of a problem. We do investigate ourselves those matters that are of any serious nature. In fact, we have a couple of investigations underway at the moment, vis-a-vis councillors in local governments. There are matters where the allegation is of a sufficiently low level nature that it does not warrant our investigation.

Last year an amendment was moved to the Local Government Act to bring in a whole new series of sections, section 255 through to about subsection T. It was a whole series. They brought in the conduct review tribunals which have jurisdiction to consider complaints against councillors. They can deal with three types of complaints: meeting complaints, which are relatively minor things that occur in the course of meetings, minor complaints and statutory complaints. The sort of ones that would perhaps come within our jurisdiction but that we would not consider worthwhile our investigating would generally fall within the category of statutory complaint. That is an allegation of a breach of a statutory obligation set out in the code of conduct.

The codes of conduct were to be adopted by all councils by 1 March this year. All councils were required to include in their codes all the statutory obligations on councillors, that is, those obligations for which there is a penalty provided and even those obligations for which no penalty is provided. For example, if we had a complaint that a councillor had received a gift but had not notified the CEO and recorded it on the register of interest, if it was a small matter that did not warrant our investigation that is ideally the sort of thing that could be dealt with by the conduct review tribunal. The matter can be referred to the conduct review tribunal. It can look at the matter. It can do a report back to the local government and then the council itself considers that report and deals with the matter. In effect, it is somewhat like the situation in state government where members of parliament deal with allegations against their fellow members of parliament. I think that should resolve a lot of the concerns about matters involving councillors that we send back to the CEO. Under the legislation, we are able to send it back with a recommendation that the matter be referred to the conduct review tribunal. It is also possible for the CEO, on his own initiative, to refer it to the conduct review tribunal.

Of course, we will always investigate those matters where any form of more serious allegation is made against a councillor. If an allegation is made against the CEO, we acknowledge the difficulties that are caused there. The LGAQ submission mentions one that was sent back to the CEO which involved an allegation against the CEO. Unfortunately, when that was sent to us there was absolutely nothing included in the material that suggested that the CEO was involved in any way. Whether it came out at a later stage that the CEO was involved or whatever, I do not know. Quite clearly, we acknowledge it is not appropriate to send a matter back to a CEO to investigate if it is about him. That would be a reason why we would investigate in some cases where otherwise we would not or, alternatively, if it was a matter of a very minor nature that still did not warrant it, we would have to look at other ways of handling that particular matter.

On the question of confidentiality, the commission is of the view that there should not be a statutory requirement that complaints be maintained as confidential. Certainly if it was ever going to be brought in, as Mr English was pointing out, it would be very difficult to justify why it should be just in the category of local government complaints against councillors that there should be a requirement of confidentiality. If it was thought that that was necessary, logically it should apply to every complaint to protect the subject officer in the same way as councillors are seeking protection.

A couple of problems would arise with it. Clearly, one is the difficulty of policing it in any way. In my submission, it should not be done in such a way as to stifle debate. If it was going to be done, it could only be the fact of the complaint to the CMC that would be required to be confidential, and not the underlying details. One could well imagine the circumstance where it is relevant, say, even in an election campaign for a candidate to bring out an allegation about another candidate. I am not saying that that should be done lightly. Anyone should think very seriously before they do that, but one could imagine that that could well arise. For the details to be maintained as confidential would stifle debate in a way that, in my submission, should not be done.

Similarly, we have circumstances where an allegation can be publicly ventilated against a person and that person will announce that the matter is with the CMC. They may say, 'I am happy to cooperate with them in the investigation and stand by what they find. I am sure that I will be vindicated.' That sort of announcement is made. That is a perfectly legitimate action for a person who desires to have the matter dealt with if it has been ventilated in the media. We see instances of that and, quite frankly, one can understand why people might want to do that. When that sort of thing is done or when it becomes known that the matter is with us, very often the public debate dies away and they await the outcome of the investigation.

However, if it was to be made confidential, it would be so difficult to police because all that has to happen is for the person to raise the matter publicly. They can tell a journalist. The journalist will protect his or her source and say in the story, 'We understand that the matter has been referred to the CMC'. We have spoken about this with respect to local government elections. People will always devise ways to get around the systems that are put in place. If people wanted to, they could find very easy ways to get around any requirement of confidentiality. You do not leak it, but your friend does, or you tell a journalist who publishes it anyway. In our submission, it would create more difficulties than it would cure.

I turn to a couple of other matters from yesterday. Mr Pincus suggested that there be a part-time chair and a full-time CEO. As I understand it, it operates somewhat like that in the WACCC. However, there is no board. There is just the part-time chair and the CEO. There are no other part-time commissioners. As to how it would work, I do not know. It is something that could be thought about.

I think that the difficulty would be that the part-time chair as suggested by Mr Pincus is the public spokesman. Yesterday for a number of hours I sat here and was asked questions across all the various areas of the commission. The fact that I have a reasonable knowledge across all areas of the commission is the thing that keeps me busy. If you are expecting a part-time chair to stand up publicly and talk with that degree of knowledge across all areas of the commission, fairly quickly the part-time chair will become full time. If you are there just on a part-time basis, quite clearly you are not going to have the depth of knowledge that is expected of the public face of the commission.

CHAIR: What about a full-time chair and a full-time CEO?

Mr Needham: In many ways that would be like our situation at the moment, where I am the full-time chair but more is delegated, say, to the executive director or something of that nature. It would be fairly difficult, I would think, to have a full-time chair and a full-time CEO. There always has to be one person who makes all of the final decisions. Of course, with the way we work, I only do that on the day-to-day administrative things; otherwise they go through the commission. It is fairly difficult and it is something that would have to be very well thought out.

May I put it this way: if this committee was wanting to enter into a big discussion about that, it is something that the commission would want to discuss, formulate a view on and make a submission to you.

CHAIR: The broader issue is simply the workload of the chairperson, which can be addressed in a number of ways, two of which we have talked about. A third way is more of the chairperson's workload being appropriately delegated within your organisation.

Mr Needham: I must say I did agree with Mr Pincus's submission that one solution would be to enable someone other than the chair, perhaps a member of the commission, to sit on public hearings. He certainly is right in what he says, that that certainly adds to the workload of the chair. I can vouch for that. However, that has been addressed. An amendment has been made by government and it has elected not to go that way. We have to accept the hand that is dealt to us.

CHAIR: Maybe there is a range of duties at the lower end of the chairperson's role that could be more appropriately delegated.

Mr Needham: I must say, I rely very heavily on my assistant commissioners and directors. I have confidence in all of them.

CHAIR: Which is not the same as delegation.

Mr Needham: No. There are delegations in place at the moment. Most of the things in crime are dealt with by Mr Callanan. There are delegations from the commission to me and Mr Callanan in most of those sorts of areas. They do not come to me before applying for a surveillance warrant. However, we do choose to leave it that, before applying for a controlled operation approval, that comes to me. We have discussed the level of the delegations and we keep it at what we consider to be the appropriate level. That latter one, might I say, is done deliberately. It does not add much work for me because we only do a couple a year, but it is done deliberately because Mr Callanan is a bit closer to his workforce. It just adds that bit of extra weight when they know they are preparing these documents to go to the chair. It just reinforces in their minds that this is something that has to be looked at fairly carefully. We use that sort of situation to reinforce in the minds of the officers the importance of the particular task that they are undertaking at a time.

In relation to the aspect of the role of the part-time commissioners—and I would invite any of my fellow commissioners here to comment on this—I was a bit surprised at some of the things that Mr Pincus said. It did not accord with what occurs now. To be fair, most of what he was talking about was before I was there. It did not accord with my knowledge of what occurred while he was there in some areas or with my knowledge of what occurred prior to when I was there. If I can give an example: our part-time commissioners can go anywhere they want to in the commission at any time and talk to anyone they want to and they, in fact, avail themselves of that opportunity. There is no inhibition upon them going and talking to anyone within the commission at any time. We have agreed, and we all think it is the sensible way, that if they are talking to an officer and that officer perhaps should do something different to what he or she is doing, instead of giving a direction to that officer to change what is being done they will discuss it with the director or assistant commissioner. Because otherwise, if we have countermanning orders, that could lead to administrative confusion among the officers. We have all agreed on that. But that just means they go and talk to the director and we sort it out. There is no inhibition upon any of the part-time commissioners at any time to go anywhere they want or talk to any officer within the commission. In fact, personally I would encourage it—I do encourage it.

Mr Pincus said things like he was not consulted as to which external counsel would be engaged. I cannot comment prior to when I was here. If it is a smaller matter, such as the sufficiency of a brief to take an official misconduct action, that will be briefed out without even any reference to me. Our legal services unit has, in effect, one could say, a stable of people they use who have experience in that area. But in the more significant matters, and if I can reference the Nuttall matter which has become public—in fact, the opinions have been made public from Mr Logan and Mr Gageler—the choice of those two independent counsel was made in discussion between Mr Lambrides, myself and Mr Drummond. I would have been remiss, I feel, if I had not consulted with Mr Drummond on that because he is in the unique situation of being able to appraise the respective abilities of counsel—a situation I was never in. That was in an area where we did need someone other than a criminal lawyer and Mr Gageler's name came directly from Mr Drummond. I had never heard of him previously.

The issue in relation to strategic planning is something that the commission has very much in mind as its role. It is something that comes up in commission meetings. Every year we have a full day which is devoted to strategic planning of the commission and the SMG. The senior officers and the commissioners get together and discuss nothing else but that. That is done each year. It was done in February last year and Mr Pincus chose not to come to that day. It is certainly not the situation where the commissioners are not involved in decision making within the commission.

We will put comments in writing with respect to what Mr Coates has referred to, but can I hand up to you an information sheet, as a matter of interest. You raised yesterday, Mr Chairman, the situation of if Mr Big talks to his doctor then the doctor's phone could be tapped. That is not my understanding of how this recent change that has been made works. We have obtained for you a copy of the information sheet put out by the federal Attorney-General's department on what is called this B-party interception. That speaks for itself.

CHAIR: What is the short position on it?

Mr Needham: The short position, as I understand, and I have not had the time to read these various examples—there is a series of examples given where it can be used—is if there is a situation where they are not able for some reason to get access to the telephone of Mr Big but they find out that he is ringing another person or using another person's phone, something of that nature, then they can apply by way of a special application. They cannot just run off and do it; they have to apply to a judge and set out all the reasons as to why they should get it. If Mr Big uses his doctor's phone to make all his arrangements on and if they have evidence or intelligence to be able to suggest that, then they can place that before a judge and seek approval to be able to record that telephone line.

Mr Coates made the point that they can pick up innocent third-party calls. Of course that can happen. He must not have kept reading the act. If he had read far enough into the act he would have seen that there are very stringent provisions about destruction of material. If material is obtained it has to be destroyed when it is no longer needed for the purposes of the investigation—which, of course, means that all those innocent calls have to be destroyed within a very short time because they are never relevant to the investigation. But even the ones that are relevant to the investigation have to be destroyed at the end of the investigation or if the investigation does not result in charges.

CHAIR: Perhaps his point was another one in addition to the issue of destruction and that is the extent to which innocent telephone conversations are intercepted in the process of obtaining an interception that is of a criminal nature.

Mr Needham: Indeed, and when we have a surveillance device in someone's residence exactly the same issue arises. That is why we cannot just go off and put a listening device in someone's house. We have to go to a Supreme Court judge and set out proper reasons why we should be able to. Then there are conditions set out as to what has to happen with the material in all those innocent cases where there are conversations with people who have absolutely no involvement in criminal activities. Those things arise all the time and they have to be allowed for and they are allowed for. It happens all the time, as I say, in listening posts and it obviously happens in TI.

Just touching very briefly on his comments about TI, one must remember that it is the Telephone Interception Act 1979. It has been going now for quite a long time. The bugs have been worked out in it many years ago in other jurisdictions. It has been amended many times, which is partly why it has become such a difficult act to read now, as various changes have been put in over the years to cover any problems that have arisen. We will deal with that in our written submission.

It is our intention to cooperate with the LGAQ, of course, in the next local government election. I feel that we will have much more impact if we do it cooperatively rather than if we just make a public statement on our own into the local government arena. We will work together with them and, as I say, utilise their web site, comments by the President of the LGAQ, et cetera.

Finally in relation to the Gold Coast inquiry, I mean no disrespect to Mr Tim Fynes-Clinton—he used to brief me when I was at the bar so he is obviously a very good solicitor—but he perhaps is more used to the adversarial nature of court proceedings where one has pleadings and one knows precisely what one is going into court over. An inquiry is totally different. An inquiry is an investigative inquiry; it is not one where we set out all our material at the beginning and say, 'This is what we are seeking to prove.' We are going into it not seeking to prove anything; we are going into it to find out what the situation is.

The mere fact that the bundle of media articles became exhibit 3 is not really a fair basis for saying that they were the reason for the inquiry. As Mr Hallam acknowledged, there had to be an inquiry at that stage. When we announced the inquiry we said that it had got to the stage where the public interest demanded that the matter be looked at and that what had happened be brought out into the open. As to how it is dealt with in the media subsequently, we could all ask for it to be done better but, unfortunately perhaps, we do not control the media.

CHAIR: Whilst I understand that inquiries are not essentially of an adversarial nature, in the public mind when the CMC initiates an inquiry it is doing that because someone has done something wrong. I am not arguing the technical merit of that, but the perspective often is that someone has done something wrong. It is not unreasonable for laypeople, not familiar with the technical differences between inquiries and the adversarial process in court, to be wanting to know what it is that is said that has been done wrong that is now being investigated. I think there is more needed to answer that difficulty. It can be an inquiry that is at large which apparently at the beginning—and I am not stating this about the Gold Coast one—has no particular point of reference from which someone can take guidance about what they need to address or not address.

Mr Needham: It is true, in that there are two aspects of it. It is to find out what really did happen and it is because it had reached the stage where there is a public interest that we have to look at these issues and bring them out into the open because of the public furore that had arisen. But you never enter into an inquiry like that unless there is already material before you to suggest that there is at least a reasonable suspicion that there has been some official misconduct, and of course that was there before we entered into the inquiry. Indeed, at the end of the day, matters were referred for consideration of prosecution.

I would need to go back and look at the wording of the press release we made at the time, but my memory of how we handled it was very much that it was in the public interest that these matters be ventilated—I am not saying that particular term was used, but that was the effect of it—and that it be brought out and shown exactly what did happen. I hear what you say, and you are right of course. We are never really going to be able to get the real picture through to every member of the public, but we must be conscious of that when we announce an inquiry as to what the role of the inquiry is. My memory is that we did try to do that in the way we handled the public release and the announcement I made at the time. I certainly acknowledge the truth of what you are saying. Those were all the extra matters that I had.

Mr ENGLISH: With due respect to the chairperson, I would like to direct my one question to the three part-time commissioners, and I take on board your comments before, Mr Needham. Mr Pincus raised a concern that the commissioners were mere spectators and not actively involved in the running of the organisation. I must admit I am actually concerned by a word used by Mr Needham yesterday. I am quoting from *Hansard*, where Mr Needham said 'having people of their integrity observing closely what the executive does'. 'Observing' is a very passive word to use; it is certainly not an active, involved word. I have concerns based on Mr Pincus's comments and also the word used by Mr Needham. Could the commissioners comment? Do you feel marginalised? Are you a rubber stamp, or are you actively involved in the decision-making process?

Dr Gow: Perhaps we should respond in order of seniority, and I draw your attention to Ms Cork, who is the longest serving part-time commissioner.

CHAIR: Anyone would think you had been at the bar!

Ms Cork: I think we have spoken before about the structure of the commission. Certainly, the way it is currently structured, with part-time commissioners and a full-time chair, presents challenges to those people to make sure the role we play is one that keeps a focus on the strategic direction of the commission. I think one of the things that is difficult when you are first a part-time commissioner is that you need to understand about the commission before you feel as if you can contribute in some meaningful way.

Do I feel marginalised? No, I do not, but I think that means it requires me to become actively involved in some way. Keeping a strategic focus is a very difficult thing to do when you work in the commission, because casework is our bread and butter and casework is terribly interesting and intoxicating. We absolutely need to know about some of the cases, and our expertise is required in taking a view on those. But, as much as we need to be involved and have some knowledge of some of the casework, it is our role to also keep a strategic focus, and there is a tension there. There is no doubt about that. I feel we need to work very hard at putting some long-term processes in place that make that easier. Those of us who have talked about that and who are part-time commissioners now are very conscious of our need to do that.

But, as Mr Needham said earlier, our individual expertise is also necessary in some instances. It is not an easy role. It is one that we need to keep a particular focus on. We need to make sure that during our term as commissioners we keep a very clear focus on our role and what it is we ought to be doing and bring ourselves back to that the whole time.

CHAIR: Ms Cork, could I ask a follow-up question, without being disrespectful to the other commissioners yet to speak. In this committee's experience, it takes a long time to become sufficiently familiar with the organisation to make a meaningful contribution. Are there things that could be done to help part-time commissioners build their knowledge base, to which they then apply the expertise they bring from their previous experience? Without that knowledge base about how the commission works, I think it would be quite difficult to actually play a meaningful role. Is there some way in which the knowledge base of new commissioners can be assisted?

Ms Cork: Certainly, when I became a part-time commissioner, I felt as if every opportunity was extended to me to build that knowledge base. Perhaps it is the way you go about trying to do that for yourself, and we are all different and we all need to do that differently. That is certainly something that we talk about and we think about. It will be important, certainly for me as part of my legacy, to make sure we try and think of better ways to do that. I am not sure there is a clear, easy answer to that. I think sometimes you just need to be there and immerse yourself in the place for a period of time before everything starts clicking into place. I know when you are working full time in any position you often feel that you need to do it for six months or 12 months before you can be a bit creative in your work. I think it is a similar sort of thing. I do not know there is any easy answer to that.

Mr Drummond: There are obvious problems with part-time commissioners and the role they can usefully play. What I want to say is that I have noticed in the year I have been on the commission a process developing with the part-time commissioners whereby they involve themselves in areas that particularly interest them to a much greater extent than the other part-time commissioners. For example, Julie is very

interested in what I will call high-level management issues and the proper role of a board like the five commissioners. She has been the driving force in generating statistical information and other kinds of reporting information which just was not provided to the commission before. She has been the driving force in generating that kind of information, and I must say I find that very useful in getting a broader view of what is going on in the commission.

David is very interested, for obvious reasons, in the research area. I know he puts a lot of personal time into close contact with people involved in various research projects. I have got a more diffuse interest—for good or for ill. I am conscious that it is important not to micromanage in the sense of getting into the nuts and bolts activities of people, but that has not stopped me on a couple of occasions. It was at Bob's invitation on one matter, but in relation to a couple of other matters it was at my own initiative, and I got involved certainly to a level I would not want to get involved in as a general rule. There is no rhyme nor reason. I have no policy identifying the kinds of matters I would like to get involved in; it is just something that occurs ad hoc. But I like to think it is not without some use. I do work closely with individual officers at relatively low levels on a couple of occasions, and I think—or I hope—that is seen as a good thing.

Mr Needham: It is by me.

Mr Drummond: We are informed about significant matters in reports given to us by the Assistant Commissioner, Crime, and the Assistant Commissioner, Misconduct. They were coming to us at every fortnightly meeting. There was a lot of repetition and not much was happening in a lot of matters. We have cut that back to a one-month report now and I think that is working better.

While I am fully conscious of the need not to micromanage, I am also conscious of a feeling of uncomfortableness that I might be missing something important. One of the ways I have dealt with that personally is to ask for and to be given without any problem the weekly report of the committee that vets all complaints—not the initial vetting but the higher level vetting. I have a look at the reports that all the members of that committee get. I have on quite a number of occasions raised with Steve concerns I feel about what I am seeing. So that is one way I try to keep a balance between high-level oversight and not letting things that really should be seen by the commissioners pass by the commissioners.

I should emphasise that I am not aware of any signs, and I certainly have no feeling, that I am getting censored information. I have never encountered that feeling at all. Anything I have asked for I have been given without reservation. One quite important issue that arose was that there was an indication, I think it is fair to say, of a lack of confidence in the higher-level management of the commission, and approaches were made to the individual part-time commissioners. There was a very prompt and very full, I think, disclosure of all the relevant information that the commission staff working in this particular area had assembled, and the part-time commissioners were able to get a very clear picture of what the position was on the ground in relation to that matter. I mention that simply because it is a good example of the absence of any attempt that I have seen to restrict the flow of important information to commissioners.

While I am by no means confident that we have got the best structure, I can say quite definitely that I do not believe any of the three part-time commissioners are rubber stamps. Between the three of us, I think there is a fair amount of detailed oversight and involvement in the activities of the commission.

Dr Gow: I am yet to celebrate my first anniversary at the commission, so I do not have long experience with them, but I would like to make the following comments in respect of two or three matters that have arisen. First, I have never had the feeling that information has been withheld from me or that my engagement or involvement in a matter was in some way restricted. In fact, I would like to record that the chairman, Mr Needham, and also Mr Lambrides have made it very clear to me—very clear—that any files are available to me for inspection—any files. In respect of one matter, I did ask for more material, and it was very promptly and fully brought to me and I was able to review it—as also was an offer of a briefing by a commission officer. My sense is that the organisation is very open to the inspection of the part-time commissioners.

The second matter is that by their very nature part-time commissioners are part-time. As a consequence, it does take a period of time before one becomes fully aware of the broad range of operations that the commission undertakes. I attribute that to the willingness of the commissioner to become involved and understand the matters, rather than on any part of the chairman or other officers to restrict the information or to limit our engagement in the commission.

Mr Needham: I would like to make it plain; I hope it is not misunderstood, what I said yesterday. With regard to the part that Mr English mentioned, I was speaking there about the accountability role that the commission has. Amongst its many other roles, as I see their role, part of it is accountability and they are one of the accountability mechanisms that the CMC works under. What I said is they—I was talking about the part-time commissioners—assist in the accountability process of the CMC. Having people of their integrity observing closely what the executive does but without themselves being involved in the day-to-day pressures ensures that those of us who face the day-to-day pressures maintain a proper sense of reality in our work. What I was meaning by that is that I hope and trust that it would never happen to me, and I know Mr Lambrides well enough that it would not happen with him, but there is always the possibility that an officer can get so imbued with being a law enforcement officer that they get carried away and can perhaps be a bit more enthusiastic in the carrying out of their work than perhaps they really should be.

Having the part-time commissioners oversighting and overseeing what we do—observing closely what we do—they would be the first to pull us back if they thought that we were starting to get, to use the vernacular, too gung-ho in our approach, say, to investigations. That was not meant to be a description of their total role, but that is a description of partly how they carry out this accountability role. They are observing closely, they are getting reports in these important matters of how things are happening. If ever they get the feeling that we—we the operatives there on a day-to-day basis—are getting too gung-ho, I would expect they would be very quickly pulling us back.

Mr CHOI: It is the view of this committee that part-time commissioners perhaps better serve the CMC rather than full-time commissioners for the mere fact that you can source specific skills from a bigger pool of people to come and contribute to the CMC. Having said that, 10 hours per week is part-time; 35 hours a week can also be regarded as part-time commissioners. Mr Pincus in his submission suggested an increase in the remuneration in order to perhaps encourage more time being spent by part-time commissioners at the CMC. I seek your comments on that. Secondly, he also suggested perhaps a secretary being afforded to the commissioners so that perhaps some of the work can be done by this secretary. I am not too sure whether he meant a secretary per commissioner or one secretary for all of the commissioners. I also seek comments on that.

Ms Cork: I suppose my first comment is that we do not do it for the money.

Mr CHOI: I understand that.

Ms Cork: It is certainly true that when you are trying to run another business, as is the case for me, then it is a pretty hard balance between the work you do in the commission and bringing in a decent income. I have a terrible conflict of interest in suggesting whether there should be an increase in remuneration or not. The reality is that it is a humble salary that you draw and you always feel the tension between the work that you feel you would like to put into the commission and what you need to do in the rest of your life in order to keep all of those things bubbling along. That is the reality, I guess.

Mr Drummond: I agree with what Julie has said. I do not think the answer lies—or any answer lies—in increasing remuneration, for example. It is a question of where you stop. The position is of a part-time commissioner. My terms of appointment would require, I think, three days a fortnight—an input of three days a fortnight. Once you start talking about increasing remuneration, questions arise as to just how extensive the involvement should be. My own personal view is that it is better to be left as it is now on the present basis with a fairly flexible involvement expected from the part-time commissioners. I hope that answers some of your questions.

CHAIR: Dr Gow.

Dr Gow: I will just respond in respect of one matter, which is the minor matter, I suppose—a secretary. I think the needs of the commissioners are quite varied and simply designating that as a secretarial position would be to cover one aspect which I think is already covered with the existing resources that are made available to us. At times I do think we need other kinds of support, but the way in which that is negotiated is simply by addressing our request to the executive director. So I would be reluctant to want to firmly hard wire in an organisational arrangement where the part-time commissioners were provided simply with a secretary, because I think our needs are more varied in respect of the matters that are dealt with from time to time.

In relation to the part-timedness and remuneration, I have no comments other than to support what has previously been said on that. I do not see remuneration as an issue in any way. With regard to the part-timedness, if it becomes more expansive it simply then is moving towards a full-time commission on the part of all of us. I am not sure that that is the model that is really required here. I do think the skills set, the experiences and the backgrounds of the current part-time commissioners provides a very coherent team that covers some of the major responsibilities and activities of the commission. Consequently, we work very cooperatively together drawing on that skills set.

CHAIR: Thank you. I think one of the other points being made by Mr Pincus was that in some respects the full-time senior staff of the organisation make decisions which strictly ought to be made by the full commission. I wonder whether you have any observation about that. It does happen in any organisation—the CMC or wherever—that the full-time senior management can end up, in effect, making all or many of the decisions that technically might still go to the board or the commission but in reality are actually being made at a senior level. They may be endorsed at a commission or board level but could not have been said to have been substantively made at the commission or the board level. That is a subtle sort of thing that happens in the cultures of organisations, I suppose. Is there any observation you would like to make, including the chairman, about that issue?

Mr Drummond: Going back to the point I raised before, I suppose I have a keen interest in operational matters and a keener interest in misconduct operational matters within crime. I really feel fairly comfortable myself by getting these weekly reports that the committee of senior officers themselves base their activities on, base their decision making on. I feel pretty comfortable getting access to that material in that the commission is not being excluded in the misconduct area, for example, from seeing the matters that it should not be seeing. That is the view I have at the moment and I do not know whether things will change, but I am pretty confident in that view.

Can I just add one further observation. When I arrived at the commission I was shown into the part-time commissioners room. It was a single room—not all that large—with four desks scattered around with four telephones. Margaret Steinberg was in there. She was working on the phone talking and I just found it absolutely impossible to concentrate on anything. I could not understand how the part-time commissioners had tolerated that kind of condition until it became obvious that most of them did not go into that particular room. I understand Mr Pincus, for example, made extensive use of the library, but it just seemed to me to be quite inappropriate. We have now got much better accommodation. We have a very small office. I am sure that people on the committee would regard it as very small indeed, but at least it is a small private office where we can function and they are all used more extensively than the single room was ever used.

I mention this because it has, I think, a bit of a symbolic effect. When staff see the part-time commissioners just lumped together in one not very big room with a desk in each corner, that is one thing. When staff can come in and talk to an individual part-time commissioner in the privacy of an individual commissioner's room, that sends another message to staff. I think it is all part of what may be a changing role that the part-time commissioners have with something like an informal portfolio system almost developing with Julie looking at high level management issues, myself being more concerned with perhaps operational issues and David looking at his own area. It might be a bit premature to say it now, but there is a sort of a portfolio approach developing among the part-time commissioners. That seems to me to be a fairly effective way for the part-time commissioners to work.

CHAIR: Are there any other comments?

Ms Cork: I was going to make a comment that kind of linked that question about whether there ought to be a secretariat for the commission with this later discussion. I suppose I would say that it is one of the questions I think we need to consider when we are looking at ensuring that the commission maintains a strategic focus. It is certainly one that has been something that I have considered. I do not have a view on it yet, but sometimes for people who work in an organisation that has incredibly heavy day-to-day demands, as the commission does, it is very easy to put your attention into those day-to-day demands at the expense of a more strategic view. One of our challenges as part-time commissioners, I think, and the commission as a whole is to make sure that we put in place a structure that allows us to keep focus on those strategic directions, the strategic issues. We are actively considering that now, and whether or not there ought to be people who are dedicated part-time to a secretariat to the commission to assist that happen is something that we will actively consider. I do not know either way yet, but it is not something that we have ruled out or ruled in. That in itself is not an answer, I think. I can certainly say that, but we are looking at the issue.

CHAIR: Can I just say that Mr English is shortly to go. He has another commitment, so if you see him disappear that is what is happening.

Mr ENGLISH: My apologies.

CHAIR: There are a couple of other points. We were intending to finish at midday and I do not want to delay too much. I just want to mention two other points, Mr Needham, and you might like to respond in your written submissions to us rather than at length now. One is an issue that we raised in our last joint meeting, and that is the utility of the strategic plan—a thick document that seems to be written in language that could mean many things to different people. It does not on its surface appear to be of much utility to month-by-month activity. I refer to the utility of the strategic plan. I must say that I did get the sense—and I am happy to be corrected—and I know that it has been said that you are required to produce such a strategic plan under legislation. But that does not necessarily mean that it can be of any great particular value to the organisation. I just have some concerns about that, because it gives the appearance of conceptual preoccupation with the strategic direction of the commission but it is not terribly clear to us how in fact such a document does in practice impact upon the strategic direction of the organisation.

The second question is directed towards the whole issue of management of expenditure costs, which we did speak about briefly on the last occasion when I asked a question about the cost of the Gold Coast council inquiry. I saw a press release recently in which the author of it alleged that your inquiry cost \$10 million. In the joint meeting there was no information available to us at that time about what the cost of the Gold Coast inquiry was. That generated a discussion about cost centres and how, in fact, you manage costs and budgeting within the organisation to cater for contingencies like inquiries and also to equip yourselves to argue the case for additional funding to Treasury. In the press release that was subsequently put out in response to the article about the \$10 million I see that I think a quarter of a million is the figure.

Mr Needham: It was not a press release.

CHAIR: I am sorry, there was—

Mr Needham: An email and I cc'd it to you.

CHAIR: Yes. I personally have some concerns about the extent to which the CMC is managing the prospects of substantial costs and expenditure of activities that cannot be entirely predictive of course, but in an environment of that uncertainty there needs to be some explanations made about the way in which activities will have an impact upon your budget. So I am happy if you want to give a brief response to either of those two issues at this point or defer it to your written submissions.

Mr Needham: Those sorts of things are dealt with all the time. We do not do them on the basis of making an allowance in the budget for next year on the basis that we will have another Gold Coast inquiry and allow for it that way. It is allowed for in a different way but it has the same effect. Experience over a number of years shows the approximate amount that is going to be spent on engaging external counsel, which will include the expense in the Gold Coast inquiry of engaging the services of Mr Mulholland. Experience will also show the amount that should be allowed as an estimate—because that is all a budget can be—for expenses such as the cost of the State Reporting Bureau for the transcript. All of those sorts of allowances are then made in the budgeting process each year.

We then have a finance committee that meets on a quarterly basis plus the strategic management group that looks at the finances on a monthly basis. We are monitoring those all the time as it is going through as to how each area is operating against their projected budget for the year. They are given a budget for each year. Each area is expected to handle and operate within their budget. If any circumstances are coming up that show that there is a variance from the norm of what would be expected for that area, that is handled, as I say, on a month-by-month basis and at the higher level on a quarterly basis by what we call the finance committee. It is very closely handled. We have to, in fact. If we do not, we could get into trouble.

CHAIR: I simply make the point that the committee asked in our joint session for your estimation of the costs of the Gold Coast matter and we were told not only that you were not able to tell us but there was no indication at that time that you could be able to tell us by taking any particular steps. Then we get a copy email sent to a journalist, which means you have published it, that it cost—

Mr Needham: No, with respect, my email was not to a journalist. The email was to the author of the article, who was not a journalist.

CHAIR: Yes. The article he wrote was for the newspaper and you communicated the information to the author of the article. So you, in effect, are publishing it. He could go on and publish it himself.

Mr Needham: He could go on and publish that. I have made it known to him that, if he wants to go and correct his statement in the *Courier-Mail*, I would not mind. He is an academic and he made that comment without having any basis for it, in my view. I made that comment to him that, perhaps if he wants to make a factual statement rather than express an opinion, in future I would welcome him to come to us and clarify whether that factual assertion is correct before he makes it. I have had further correspondence with Mr Prasser.

Mr Hummerston did the process. After the committee expressed that opinion the last time, what had to be done was every person who had an input into the Gold Coast inquiry had to sit down, go back over their diaries and make an estimate of the amount of time that they spent on the matters involved in Operation Grand, as we called it, which was the totality, more than just inquiry. That has been done. Then the external costs were also taken into account. That was where the estimate came up that it was less than three-quarters of a million dollars.

That is something that we do not do on a normal basis because we do 110 or so investigations each year. We do not cost each of those separately, but we do cost what the cost is of having the number of investigative teams that we have working on those investigations. We do have that allowance in our budget for the additional costs that are involved. There is going to be a certain allowance made every year for travelling costs. We make an allowance for hearing costs. We have a reserve, which was dipped into for Operation Grand because it went beyond the amount that misconduct had in its budget to cover that area. It was discussed at a finance committee and there was money transferred out of the general reserve, which is kept for these extra sorts of things to allow them to cover that cost. It is dealt with in a different way. We do not deal with it in costing out every separate investigation, because investigations can vary so much. We deal with it in a different way. But you could be assured that the finances have to be looked at closely all the time. We cannot do it going along without considering the costs involved in matters.

CHAIR: Just for clarity, when I raised this point at our joint meeting I was not asserting that you ought to be costing every matter of misconduct; I was asking a question about probably one of the bigger inquiries that you have undertaken this year. The argument about whether you ought to be costing such an inquiry is not defeated by rejecting the argument that you should be accountable for every one.

Ms Cork: Can I make a comment just to reinforce what Robert said? Following our discussion with you at that joint meeting we talked about it at the commission level and decided that we would do that. So I can assure you that the discussion that we had with this committee was a prompt for to us say, 'Yes, this is something that we ought to do,' and then we proceeded to do it. It just so happened, for our own purposes, I guess, that there was the article that then appeared in the paper where somebody asserted that again. It was a good opportunity. So we made the decision at that point that, yes, we would respond, because we had pulled out that information and that we would also send a copy to you because it was initially raised here.

CHAIR: There is just one other matter that I have reminded myself of. Mr Chairman, would you mind responding to this in your submission to save time now? That is the issue of the whole area of the Legal Services Unit and general counsel. That area was the subject of some detailed consideration in the last three-yearly review with a number of recommendations. I understand that there have been some substantial changes in that area. Could you inform us of what changes have taken place and how they

improved the service provided to the CMC from that area, such as to address the concern the committee had three years ago that there was not the level of fearless, independent and high-quality legal advice being provided in-house to the commission?

Mr Needham: We can do that.

Mr ENGLISH: This came up during the LGAQ's submission this morning. With the process of devolution, if you get a complaint from the council, you may then decide to refer it back to the council. I would like your comments—either now or in writing—about how you go about considering the capacity of the council to investigate. Do you consider, at that devolution stage, that a council might not be able to investigate this matter? How formal is the process for considering a referral off to the Ombudsman, still devolving it from your organisation but not devolving it back to a council that may not have the capacity to do so? I have to say that, in asking the question, I also understand the easy cop-out of a local government saying, 'We don't have the capacity.' Certainly, it is incumbent upon them over the longer term to build that capacity. I acknowledge that. I do not want this to be seen as a permanent relief valve but maybe a temporary relief valve. What process do you go through in assessing that prior to handing it back to a local government?

Mr Needham: I might ask Mr Lambrides. This is more at the level of the day-to-day assessment, which Mr Lambrides can more effectively answer than I could.

Mr Lambrides: Not only in relation to local governments but generally there are a number of ways in which we try to assess the capacity of the agency. We can do it as a result of specific reviews that we have conducted in relation to other investigations. We can also do it from feedback from complainants. We also get knowledge of relevant officers within those agencies. Some of them have a very good reputation; some of them have a poor reputation. So we take that into account and put it into the mix. We also do quality assurance reviews of the bigger agencies—not so much of the smaller councils but certainly large councils. We have certainly done one in relation to the Brisbane City Council just recently where we gathered together a number of files that we called up from them. We look to see how they have dealt with those. We assess their capacity by that means.

We also have available through feedback from the agencies themselves that they can or cannot do a particular matter and on occasions we, as a result of those discussions, have said, 'We will assist in a particular way by providing you with an investigator.' We have sent an investigator to the Cairns City Council to assist with their investigation, although we had sent it back. We provided one of our policing investigators to go up there as well. We have taken over some of the matters on the basis that they have not been able to handle it. They are all the various means that we use to assess the capacity of agencies.

One of the problems you have, of course, is that the agencies are only as good as those persons within the particular units at the time who are assigned to investigate. We have had situations where we have gone and done quality assurance reviews of departments and they have come up very well. Then the officers from those departments move elsewhere and new people come in. All of a sudden, the capacity that they had is diminished—I must say in the same way as when we lose our senior officers our capacity diminishes to a certain extent at least for a certain time because we lose experienced officers.

The other thing that we do have in our favour at the moment is that we are losing a lot of our senior officers to the agencies. They are going to build up their capacity by the fact that they have been with us for such a period of time. So we do it by many means, as you can see. In relation to local government matters, there will still be some matters that, no matter what their capacity, are simply not serious enough for us commit resources to.

Mr ENGLISH: So do you use the Ombudsman?

Mr Lambrides: What we normally do is that we advise them to use an external investigator. We suggest that they seek advice from the LGAQ. Now we have this new provision under the Local Government Act, which in all honesty we have not utilised yet but we will be utilising—the one that Mr Needham was talking about earlier. We are hoping that that section will have a significant impact upon the problems that they currently face.

CHAIR: Thank you very much. Ladies and gentlemen, thank you very much for your contributions today and yesterday as well. We very much appreciate it. We will certainly give careful consideration to all of the submissions and I will now formally close the hearing.

Committee adjourned at 12.14 pm