

Three-yearly review of the Crime and Misconduct Commission

Submission by the CMC to the PCMC

31 October 2008



Our vision:

That the CMC be a powerful agent for protecting Queenslanders from crime and promoting a trustworthy public sector.

Our mission:

To combat major crime and promote public sector integrity.

We value:

- ▶ Integrity
- ▶ Accountability
- ▶ Excellence and innovation

We will:

- ▶ Act with independence, impartiality and fairness in the public interest.
- ▶ Show commitment to the rule of law.
- ▶ Embrace excellence, professionalism and teamwork in everything we do.
- ▶ Be responsive to our clients, and work collaboratively with our stakeholders.
- ▶ Respect and value our staff.
- ▶ Demonstrate leadership, innovation and flexibility in performing our duties.

Purpose of this submission

Section 292(f) of the *Crime and Misconduct Act 2001* (CM Act) provides the Parliamentary Crime and Misconduct Committee (PCMC) with the responsibility:

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

A report of the PCMC's last review of the Crime and Misconduct Commission's (CMC) activities was tabled in October 2006.

This submission has been prepared to assist the PCMC in its forthcoming review of the CMC. It includes a summary of the CMC's activities and achievements for the past three years, as well as an outlook on its future directions and challenges.

This submission should be read in conjunction with other documents, including our annual reports and confidential briefing papers provided to the PCMC every two months, as these provide detailed information regarding the CMC's activities in the previous three years.

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Abbreviations

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

Chapter 1: Our history and purpose

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

ORIGINS

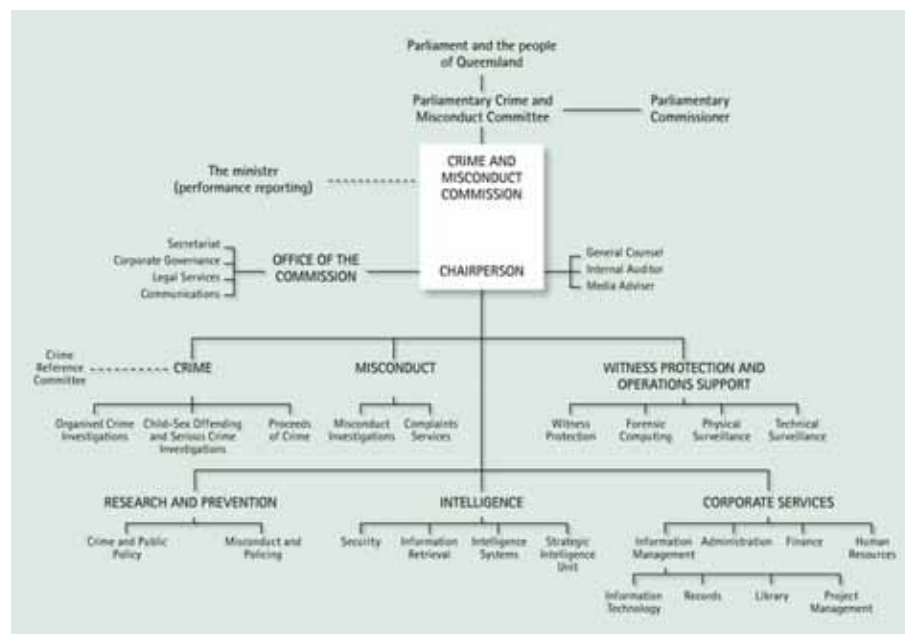
The CMC is an independent specialist agency established to fight major crime and enhance public sector integrity in Queensland. It was established under the *Crime and Misconduct Act 2001* (CM Act) and came into existence on 1 January 2002.

The CMC is actively present in our public life and reassures Queenslanders that there is a vigilant independent body striving to ensure our public institutions are ethical and accountable, our police honest and efficient, our children safe, and our communities as free as possible from corruption and organised crime.

STRUCTURE

The CMC is headed by a five-member Commission comprising the Chairperson (currently Mr Robert Needham), who is also the chief executive officer, and four part-time Commissioners who represent the community. Decisions made by the Commission are put into effect by the Executive Committee.

While independent of the government of the day, the CMC is fully accountable to the people of Queensland through the Parliamentary Crime and Misconduct Committee. The following organisational chart shows the basic structure and reporting responsibilities of the CMC.



Staff establishment

The CMC is an Equal Employment Opportunity employer whose staff are covered by the *Equal Opportunity in Public Employment Act 1992* and representative of the community they serve. Our staff establishment of 315 is made up of a diverse range of people with skills that assist the CMC achieve its corporate goals. Staff comprise lawyers, police, accountants, investigators, social researchers, Indigenous liaison officers, intelligence analysts, computing specialists, administrators and support staff. At 30 September 2008, our full-time staff equivalent was 302.5, reflecting the challenges we face in attracting and retaining staff.

CHIEF WORK AREAS

The CMC focuses on three main areas of activity: combating major crime, reducing misconduct and improving public sector integrity, and protecting witnesses.

All three outputs have contributed to the Queensland Government's priority '*Protecting our children and enhancing community safety*'. In addition, the second output '*Reducing misconduct and improving public sector integrity*' contributed to the government priority '*Delivering responsive government*'.

In the future the CMC's focus of activity, by combating crime and contributing to the integrity of the public sector, will support the Queensland Government's priorities as outlined in *Q2 – Towards Tomorrow's Queensland* which refer to a future Queensland which is strong, green, smart, healthy and fair.

The following areas assist in achieving the government's outcomes.

Crime

The Crime area of the CMC works with the Queensland Police Service (QPS) and other law enforcement agencies to combat and prevent major crime, including organised crime, criminal paedophilia, serious crime and terrorism. Through the use of our special powers the CMC is able to use coercive hearings to make a significant contribution to combating and preventing major crime (see Chapter 3).

The Proceeds of Crime Unit is located within the Crime area and is responsible for the civil confiscation scheme, designed to remove the financial incentive from engaging in serious crime (see Chapter 4).

Misconduct

The Misconduct area receives and assesses complaints about misconduct and monitors how agencies deal with them (see Chapter 5). In the most serious cases the CMC will independently investigate allegations. In conjunction with the Research and Prevention area, Misconduct takes a lead role in building the capacity of other government agencies and departments to prevent and deal with misconduct (see Chapter 6). Misconduct also works closely with public sector agencies such as the Queensland Ombudsman and Queensland Audit Office to achieve its aims.

Witness Protection

The CMC has primary responsibility in the state of Queensland for the protection of people whose safety has been endangered as a result of assisting law enforcement agencies. The Witness Protection program operates under the *Witness Protection Act 2000* (Qld) and the CM Act. The Witness Protection area assesses all witness protection applicants from client agencies, assists protected persons to meet their court commitments and provides education and marketing sessions to referring agencies.

The Advanced Diploma of Public Safety (Police – Witness Protection) developed by the Witness Protection area was the first nationally accredited police course (see Chapter 8).

Operations Support

Operations Support provides the CMC's specialist operational and investigative services through the use of physical surveillance, technical surveillance and forensic computing resources. The area, contributing to all three of the CMC's major areas of activity, is led by an Assistant Commissioner of Police attached to the CMC (see Chapter 8).

Research and Prevention

The Research and Prevention area carries out research into crime, misconduct, policing and other policy and legislative areas, particularly in relation to criminal justice and public policy (see Chapter 9). Research into policy and legislation occurs through referrals by our minister under section 52(1)(c) of the CM Act. In conjunction with Misconduct, Research and Prevention provides misconduct prevention and capacity building services to other government agencies and departments.

Intelligence

The Intelligence area provides valuable information through collecting, correlating and analysing information and intelligence relevant to the Commission's responsibilities. It monitors various crime markets in Queensland to identify emerging trends or changes in threat levels and shares relevant intelligence with other law enforcement and government agencies. The area facilitates the exchange of information between the crime and misconduct areas and provides tactical information and intelligence support for investigative teams (see Chapter 3).

Corporate Services

Corporate Support assists all areas of the CMC to achieve their organisational goals. Responsibilities include the management of the CMC's internal and external accountability systems and the provision of financial, administrative, human resources, information management, communications and corporate governance services (see Chapter 10). Corporate Support facilitated the CMC's relocation from the Brisbane CBD to new premises in Fortitude Valley in September 2008.

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

This chapter will:

- ▶ explain the CMC's investigative powers and how they can be used optimally
- ▶ set out important legislative amendments made over the past two years affecting how we carry out our investigations
- ▶ discuss the need for further amendments
- ▶ provide an update on the issue of obtaining advice from the ODPP before charging

CMC POWERS

The CMC has special powers at its disposal, in addition to the normal powers of investigation in the fight against major crime and misconduct.

This section will discuss the hearings powers and other powers and how amendments could make the use of these more effective.

Hearings

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

The hearings power is an important investigative tool which is used to gather information. The CMC uses its hearings power judiciously and in accordance with appropriate checks and balances. In particular, the power to conduct a hearing in public may only occur in relation to a misconduct investigation and is a decision made by the Commission when satisfied that it is not in the public interest to close the hearing. As the Salmon Report highlighted:¹

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

Purpose of hearings

The CMC makes use of the hearings power to:

- ▶ elicit the truth about events that have occurred, even where the evidence obtained during the hearing may not be able to be used against a person;

¹ A report of the commission established under the chairmanship of the Rt Hon. Lord Justice Salmon: *Report of the Royal Commission on Tribunals of Inquiry 1966* (Great Britain).

- ▶ test a witness's version of events to assess (and possibly exclude) the witness's involvement in a matter. In particular, other versions of events are put to witnesses, such as evidence obtained by surveillance and evidence obtained from other witnesses which may contradict evidence given by the witness;
- ▶ seek the truthful version of events from a witness who has provided inconsistent versions of events or versions of events which differ from other witnesses and other evidence collated during the investigation;
- ▶ identify other chains of inquiry which may identify admissible evidence proving facts in issue;
- ▶ secure the evidence of uncooperative persons and persons with professional confidentiality issues (e.g. doctor–patient confidentiality);
- ▶ eliminate certain scenarios and refocus investigations.

Dealing with witnesses who fail to attend a hearing or fail to answer questions at a hearing

When witnesses before CMC hearings fail to attend a hearing or answer questions, they may be charged with an offence, arrested and/or be subject to contempt proceedings.

If a witness fails to attend a CMC hearing, the Act permits the CMC to apply to the Supreme Court of Queensland for an arrest warrant authorising that person to be brought before a CMC hearing and to be detained in custody until excused from attending the hearing.²

In the event that a witness attends a CMC hearing but then refuses to answer, the presiding officer of a CMC hearing may issue an arrest warrant to bring the witness before the Supreme Court of Queensland for contempt proceedings.

The existence of the power of arrest and contempt proceedings are strong deterrents to witnesses considering failing to attend a hearing or not answering questions at a hearing.

Dealing with witnesses who lie during a CMC hearing

Director of Public Prosecutions guideline

On 14 March 2008, following representations by the CMC, the Director of Public Prosecutions (DPP) issued a Guideline clarifying circumstances in which perjury charges would not be pursued against witnesses who had supplied false evidence to the CMC. The Guideline provides:

Perjury during investigative hearings

Where a witness has been compelled to give evidence under oath at an investigative hearing and the witness has committed perjury in the course of giving that evidence, it will generally not be in the public interest to prosecute the witness for the perjury if, the witness subsequently corrected the perjury and was otherwise reasonably considered by the Director, acting on the advice of the agency or agencies involved in the investigation, to have been fully truthful in giving evidence about all matters material to the investigation.

² s167 Act

The guideline has clarified the circumstances in which the CMC should refer charges of perjury to the DPP.

Evidence issue in perjury prosecutions

The CMC has identified a difficulty in relying upon evidence given at CMC hearings to prove a charge of perjury, which has arisen from amendments to s.197 of the Act in 2006.

The Explanatory Notes to the *Crime and Misconduct and Other Legislation Amendment Bill 2006* stated the legislative intention in amending s.197 of the Act was:

Clause 18 Amendment of s.197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion):

This clause amends s.197 to:

- *allow self-incriminating evidence that a person has been compelled to give at a Crime and Misconduct Commission hearing to be used in proceedings against that person for the falsity of other compelled evidence;*
- *ensure that only individuals (and not corporations) can claim the privilege against self-incrimination, in accordance with the Queensland Law Reform Commission's Report No 59 The abrogation of the Privilege Against Self- Incrimination; and*
- *rename the privilege against self-incrimination the self-incrimination privilege.*

Following the enactment of the *Crime and Misconduct and Other Legislation Amendment Act 2006* on 11 August 2006, s.197 provided:

197 Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion

- (1) *This section applies if—*
 - (a) *before an individual answers a question put to the individual by the commission or a commission officer or produces a document or thing or a written statement of information to the commission or a commission officer, the individual claims self-incrimination privilege in relation to the answer or production; and*
 - (b) *apart from this Act, the individual would not be required to answer the question or produce the document, thing or statement in a proceeding if the individual claimed self-incrimination privilege in relation to the answer or production; and*
 - (c) *the individual is required to answer the question or produce the document, thing or statement.*
- (2) *The answer, document, thing or statement given or produced is not admissible in evidence against the individual in any civil, criminal or administrative proceeding.*
- (3) *However, the answer, document, thing or statement is admissible in a civil, criminal or administrative proceeding—*

- (a) *with the individual's consent; or*
- (b) *if the proceeding is about—*
 - (i) *the falsity or misleading nature of an answer, document, thing or statement mentioned in subsection (1) and given or produced by the individual; or*
 - (ii) *an offence against this Act; or*
 - (iii) *a contempt of a person conducting the hearing.*

Section 197 of the CM Act in its current form is constrained by the inclusion of the words 'mentioned in subsection 1' in s.197(3)(b)(i). This limits the use to which evidence given by a witness under self-incrimination privilege can be used in perjury proceedings. Examples of how s197 applies under this arrangement include:

- ▶ Evidence given by a person who claims the self-incrimination privilege can only be used in proceedings against that person, concerning false or misleading evidence given by that person under claim of self-incrimination privilege.
- ▶ If a witness gives false evidence on a first occasion under a claim of self-incrimination privilege; then gives evidence on a second occasion (also claiming self-incrimination privilege) contradicting the evidence given on the first occasion, the answers given by the witness on the second occasion can be used against the witness to prove the falsity of answers given on the first occasion.
- ▶ If a witness gives false evidence on a first occasion without claiming privilege; then gives evidence on a second occasion claiming self-incrimination privilege and contradicting the evidence given on the first occasion, the answers given by the witness on the second occasion cannot be used against the witness to prove the falsity of answers given on the first occasion.

The CMC submits that the DPP's guideline on perjury during investigative hearings is an adequate safeguard for witnesses who at first give false evidence but effectively 'purge their perjury' at subsequent hearings. Additional protection from perjury proceedings should not be afforded to witnesses who do not claim privilege against self-incrimination before giving false evidence.

The CMC requests the Committee's support for an amendment to s.197 of the Act to remove the anomaly in relation to claims against self incrimination.

Other powers

In addition to its hearings power, the CMC has a number of other powers. These are:

- ▶ the power to issue notices to produce;
- ▶ the power to use surveillance devices;
- ▶ the power to conduct overt searches;
- ▶ the power to conduct covert searches (for the crime function only);
- ▶ the power to access telecommunications and financial information.

Production notices (Notices to Produce and Notices to Discover)

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

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

We use this power extensively. The power is most frequently used to seek the production of financial records from banks and other third-party institutions in order to build a financial profile of persons of interest and their close relatives and associates.

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

Confidentiality clauses

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

This provision helps preserve the integrity of an investigation. For example, it can be used if an investigation would be prejudiced by the target becoming aware that their banking records were being sought.

Our approach is that notices should not be issued as confidential notices as a matter of course, but only when it is considered that there is some tactical or forensic purpose to be served in including such a clause.

Notice to Discover to a witness or potential witness before the Misconduct Tribunal

Section 75(9) of the Act prohibits the CMC from issuing a Notice to Discover to a person who may be a witness or the appellant at a Misconduct Tribunal hearing. This section provides:

The chairperson must not give a notice to discover to a person who is subject to a disciplinary charge of official misconduct before a misconduct tribunal (or any of the person's witnesses or prospective witnesses) in relation to information, documents or things relevant to the charge.

Under the *Misconduct Tribunals Act 1997*, the Misconduct Tribunal currently conducts its review jurisdiction by way of re-hearing:

- ▶ on the evidence before the original decision maker;
- ▶ considering fresh, additional or substituted evidence where the party seeking to adduce that evidence satisfies the Tribunal that:
 - the party did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or
 - in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

At times, there may be instances where the CMC needs to undertake further inquiries after a matter has been referred to the Misconduct Tribunal for review.

Examples:

- ▶ where the CMC wishes to obtain records from a doctor, to establish the mental state of an appellant. Section 75(9) of the CM Act would prevent the CMC issuing a Notice to Discover to the doctor to obtain medical records, if the doctor was a witness to be called at the rehearing.
- ▶ where a QPS officer seeking the rehearing of a disciplinary decision wishes to adduce new evidence which itself raises allegations of official misconduct engaged in by other QPS officers. For example, it may be alleged that there were additional QPS officers who witnessed an event giving rise to an improper conduct charge against another QPS officer. If the other QPS officers allegedly witnessed the events but did not report the improper conduct to their supervisor as they are required to do, the CMC, exercising its statutory functions in relation to police misconduct, would need to investigate the new allegation. A step which the CMC may wish to take is to obtain documents from the QPS officers establishing their movements at the time of the alleged event. After receiving those documents, the CMC could then interview the additional QPS officers in relation to alleged police misconduct engaged in by those QPS officers in not reporting suspected official misconduct by the appellant QPS officer.

Section 27 of the *Misconduct Tribunals Act 1997* provides the Misconduct Tribunal with the power to direct the CMC to undertake investigations in relation to a particular matter. Despite this provision, it is not clear that the provision overrides s. 75(9) of the Act.

Section 75(9) is also inconsistent with s. 331 of the Act which provides the CMC, as an independent investigative body, with a unique power to continue to investigate matters even where the matters being investigated are the subject of proceedings before the tribunal or a court.

It is submitted that it would be appropriate to omit s. 75(9) from the Act and provide the CMC with the express power to issue Notices to Discover to persons who may be the subject of disciplinary proceedings before the Misconduct Tribunal and to witnesses appearing before proceedings before the Misconduct Tribunal given:

- ▶ the public interest in ensuring that police officers meet the standards of behaviour which the community expects of them; and
- ▶ the statutory function of the CMC to monitor police misconduct; and

As the Misconduct Tribunal's role is currently under review, a submission on this issue has been made by the CMC to the Independent Expert Panel Tribunals Review Project which is considering the proposed Queensland Commercial and Administrative Tribunal (QCAT). Part of the functions of the QCAT would be to exercise the current functions of the Misconduct Tribunal. The Panel has accepted that s. 75(9) should be omitted from Act should the QCAT Bill proceed, as the QCAT Bill will likely include provisions to make official misconduct appeals hearings de novo. This change to the manner in which appeals may be heard permits appellants in official misconduct appeals to adduce new evidence without leave. There is an increased likelihood that the CMC will need to undertake further inquiries in relation to the matters raised by that fresh evidence.

The CMC requests the Committee's support for an amendment of s. 75(9) of the Act to allow the utilisation of notices to discover in respect of subject officers of Misconduct Tribunal proceedings and witnesses before those proceedings.

General power to seize evidence without notice

At times during CMC investigations, a witness being voluntarily interviewed may have documents or other evidence which the witness is not prepared to give to CMC officers at the time of the interview. In the case of misconduct investigations and confiscation investigations, there is currently no general power to seize evidence located in a public place or another place where a CMC officer has lawfully entered.

This power is available to CMC officers conducting crime investigations³ but is only available to CMC officers in misconduct and confiscation investigations when executing search warrants⁴.

The power is available to a police officer investigating any matter under the *Police Powers and Responsibilities Act 2000*⁵ (PPRA). This creates an anomaly where a police officer secondee is engaged on a misconduct investigation, as he or she can exercise the power to immediately seize relevant documents but a civilian CMC officer working on the matter cannot.

The CMC requests the support of the Committee to amend the Act to provide CMC officers working in misconduct and confiscation investigations with the power to seize evidence located in a public place or another place that a Commission Officer has lawfully entered.

³ s110 Act

⁴ s110A and s111

⁵ s196 PPRA

Surveillance devices

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

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

As well as the surveillance powers available under the Act, police officers attached to the CMC are able to apply for warrants under the PPRA.

Apart from the legal resources involved in applying for a surveillance warrant, considerable time and effort is required on the part of surveillance and technical officers in safely installing, maintaining and ultimately removing the devices without compromising an investigation. However, the greatest resource imposition relates to the necessity of establishing a listening or monitoring post for the duration of the period during which the device may be operational (which currently may be up to 30 days), and staffing the post with monitoring officers throughout that period, generally on a 16 to 18 hour a day basis. In view of these considerations, surveillance devices are used judiciously.

Overt searches

The ability to obtain a warrant enabling law enforcement officers to enter and search premises and seize relevant evidence is a basic tool for any criminal investigation, and is available for all CMC investigations. Overt search warrants issued pursuant to the Act and the PPR Act are obtained regularly for the purposes of crime and misconduct investigations.

Covert searches

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

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

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

Telecommunications information

In 2006 and 2007 amendments were made to the *Telecommunications (Interception and Access) Act 1979* which clarified the CMC's existing access to call data such as call charge records (CCRs), introduced new prospective CCRs and allowed access to the content of stored communications held by telecommunications carriers.

Another change during this period was the development of the lead role of the Commonwealth Attorney-General's Department in consulting with law enforcement agencies on their access to telecommunications information. The CMC has built a strong network with other law enforcement agencies and the Commonwealth Attorney-General's Department which will assist with the implementation of telecommunications interception when it is granted this additional power.

During 2008, the CMC obtained stored communication warrants to gather evidence in crime and misconduct investigations. The warrants were issued by a senior member of the Administrative Appeals Tribunal and provide content of SMS messages and voice mail messages from mobile phones.

The CMC has made representations to the Commonwealth Attorney General's Department to amend the *Telecommunications (Interception and Access) Act 1979* to allow the CMC to utilise CCRs for all CMC functions.

Austrac reports

The reforms introduced by *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* are being implemented over a two (2) year period. The importance of these reforms to the CMC will be that more information will be available to address money laundering, particularly by organised crime groups and financing organised crime. The Act will impose reporting obligations on a broader range of financial service providers including gambling establishments, jewellers and bullion dealers, real estate agents, professionals such as lawyers and accountants.

The CMC has worked closely with JAG on consequential changes to the *Financial Transactions Reports Act 1992 (Qld)* to ensure there is a smooth transition to the next phase of the reforms to commence in December 2008.

Challenges to the CMC's use of special powers

During the reporting period, there have been several challenges determined by the Supreme Court of Queensland in response to applicants who have questioned the CMC's use of its powers. These applications have considered the following:

- ▶ the abrogation of the privilege against self incrimination in misconduct hearings (Witness D v Crime and Misconduct Commission), 2008.
- ▶ the abrogation of spousal privilege in crime hearings (Callanan v B), 2005.
- ▶ whether privilege against self incrimination has been abrogated in crime hearings (Witness C v Crime and Misconduct Commission), 2008. The Supreme Court found that it was abrogated for crime hearings.

- ▶ whether it was an abuse of process for the CMC to appeal to the Misconduct Tribunal against a disciplinary decision made by a QPS officer and to seek dismissal as a sanction to be imposed by that Tribunal, in circumstances where that sanction was not available to the QPS officer who made the disciplinary decision. (*Chapman v Crime and Misconduct Commission*), 2008. The CMC was told that the charges would be determined by an officer who had no authority to dismiss. The CMC sought the officer's dismissal on appeal to the Misconduct Tribunal. It was argued that it was an abuse of process as the CMC permitted the matter to be dealt with by the officer with limited authority. The Supreme Court of Queensland rejected the argument on the basis that the CMC had no control over which officer determined the matter.

Delegation of Commission's powers under Section 60(2)

Under section 38(4)⁶ of the former *Criminal Justice Act 1989* (CJ Act), the equivalent position of the Director Complaints Services (that is, the Chief Officer Complaints) was authorised to provide information to units of public administration to act upon in relation to complaints that involved conduct other than official misconduct, such as a breach of discipline by police or misconduct on the part of a public servant.

The authority to provide information, such as this, now comes under section 60(2)⁷ of the *Crime and Misconduct Act 2001* (the Act), and by virtue of section 269 can only be delegated to the chairperson or the assistant commissioner. In practical terms, the limitations of the delegation make the referral to an agency of information about a less serious matter less efficient than the referral of a complaint of official misconduct, as the referral must be authorised at least at the assistant commissioner level.

It is acknowledged that the type of information captured by section 60(2) includes such sensitive information as that covered by the *Criminal Law (Sexual Offences) Act 1978*, the improper disclosure of which is a criminal offence. To improve the timeliness and efficiency of the referral of information, but minimise the risk of improper dissemination, the options include:

- ▶ A new provision be included in the Act that has the same effect as section 38(4) of the former CJ Act, or
- ▶ An amendment to section 269 of the Act be made to allow the authority under section 60(2) to be delegated to other senior officers. Any such delegation could be limited through the delegation instrument.

The CMC seeks the Committee's support for the authority to provide information under section 60(2) of the CM Act to be effectively delegated to the level of senior officer, either by a new provision (similar to that which existed in section 38(4) of the former CJ Act) or by amendment to section 269.

⁶ The Complaints Section may refer to the principal officer of a unit of public administration any complaint, information or matter that, in the opinion of the chief officer of the section, involves, or may involve, cause for taking disciplinary action (other than for official misconduct) by the principal officer against a person holding an appointment in the unit of public administration.

⁷ The commission may give information coming to its knowledge, including by way of a complaint, to a unit of public administration if the commission considers that the unit has a proper interest in the information for the performance of its functions.

LEGISLATIVE AMENDMENTS WHICH HAVE ASSISTED THE CMC

The CMC regularly liaises with the Department of Justice and Attorney-General, about legislative amendments to help the CMC operate more effectively. The Department of Justice and Attorney-General is the department responsible for the administration of the Act.

With the support of the PCMC, the following important amendments have been made during the reporting period. These are detailed below under the following headings:

- ▶ Cross-border investigations
- ▶ Amendments to the Act.

Cross-border investigations — update

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

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

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

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

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

In order to address these concerns, the CMC’s powers for misconduct have been separated from its crime powers in the amendments contained in the *Cross-Border Law Enforcement Legislation Amendment Act 2005 (Qld)*, commenced on 30 June 2006. Some of the significant changes in the Queensland Act are as follows:

- ▶ The CMC’s power to use surveillance devices for crime investigations is now, like its controlled-operations power, contained in the PPRA. Mutual recognition will be sought for these powers from other states and the Commonwealth, meaning that cross-border investigations will be able to be conducted in other jurisdictions through applications made and authorities issued in Queensland.

- ▶ The CMC's power to use surveillance devices and controlled operations for misconduct investigations is contained in the Act. Mutual recognition will not be sought for these powers, and their purview will basically remain as it is.
- ▶ A general authority to obtain and use assumed identities is available to all CMC officers, not just police officers, and no longer limited to controlled operations.
- ▶ The Parliamentary Commissioner auditing, and reporting on, the CMC's use of powers.

Transitional provisions allowed existing controlled operations to continue and existing surveillance-device warrants continue to have effect.

The following is the current status of mutual recognition and enactment of model legislation in other states:

Controlled operations

- ▶ New South Wales has passed legislation which recognises Queensland's controlled operations laws (Chapters 11 and 12 of the PPRA) effective from September 2007. Queensland is negotiating the recognition of the New South Wales legislation as a corresponding law.
- ▶ Victoria has enacted the model legislation for controlled operations, mutual recognition has not yet been negotiated.
- ▶ Other states are in various stages of preparing their model legislation.

Surveillance device warrants

- ▶ Victoria and Queensland have each recognised each other's surveillance device warrants laws as corresponding laws, effective 1 July 2006.
- ▶ New South Wales has enacted the model legislation for surveillance devices, mutual recognition has not yet been negotiated.
- ▶ Other states are in various stages of preparing their model legislation.

Assumed identities

- ▶ Victoria and Queensland have recognised each other's assumed identities laws as corresponding laws, effective 1 July 2006.
- ▶ New South Wales has not yet introduced the model legislation for assumed identities.
- ▶ Other states are in various stages of preparing their model legislation.

The process of mutual recognition for the powers that relate to the CMC's crime functions, is progressing, however other States appear to be slower than expected to enact the model legislation.

Amendments to the Act

The Act was last significantly amended by the enactment of the *Crime and Misconduct and Other Legislation Amendment Act 2006 No 41* which commenced on 11 August 2006. Many of the amendments to the Act were in response to recommendations made in the PCMC's previous reviews of the CMC.

The 2006 amendments to the Act included provisions which:

- ▶ allowed notices to produce to be used for witness protection matters;
- ▶ allowed a presiding officer at a hearing to require immediate production of a document or thing by a witness at the hearing;
- ▶ amended s. 197 to clarify that any answers given by a witness after a claim of privilege against self-incrimination may still be used in proceedings about the falsity or misleading nature of an answer given by the witness (this provision is discussed at pages 6–7 and further amendment is required in response to the 2006 amendments);
- ▶ provided that the Public Interest Monitor (PIM) may give reports on noncompliance with surveillance warrants by CMC officers to both the CMC and the PCMC;
- ▶ provided that the Chairperson of the CMC must report suspected improper conduct by officers of the former CJC and QCC to the PCMC;
- ▶ allowed the Assistant Commissioners to be appointed to preside at public hearings, in addition to the Chairperson.

The 2006 amendments to the *Witness Protection Act 2000*:

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

The *Police Powers and Responsibilities and Other Acts Amendment Act 2006* was enacted on 1 June 2006 and introduced a number of further amendments to the Act as a result of changes made to the PPRA relating to assumed identities as part of the model legislation referred to above.

In respect of misconduct investigations, amendments to the Act were made to:

- ▶ allow for the lawful acquisition and use of an assumed identity to assist with misconduct investigations;
- ▶ set out the circumstances in which the chairperson may grant an authority to acquire or use an assumed identity, and when that authority may be changed or revoked;
- ▶ regulate the use of assumed identities including the evidence of assumed identities, protections and indemnities in relation to the use and creation of assumed identities;
- ▶ creates offences for the misuse and disclosure of an assumed identity;
- ▶ allows for the delegation of the power to authorise the creation and use of an assumed identity.

The *Criminal Code and Jury and Another Act Amendment Act 2008* which commenced on 19 September 2008, included an amendment to s. 192 and new Chapter 8 Part 6 of the Act. The amendment was necessary to clarify that a witness before a misconduct hearing is not entitled to remain silent or to refuse to answer a question on the ground of self incrimination privilege or confidentiality. This amendment was necessary to clarify the law following the Supreme Court decision in *Witness D v Crime and Misconduct Commission* (2008) QSC 155.

AMENDMENTS TO ACT AND OTHER LEGISLATION SOUGHT BY THE CMC

The CMC seeks the following additional legislative amendments to:

- ▶ make government owned corporations that are private entities that exercise public functions more accountable;
- ▶ prevent witnesses in CMC hearings claiming ‘spousal privilege’ to avoid answering questions;
- ▶ consolidate powers related to major crime and misconduct functions;
- ▶ add a new offence of “misconduct in public office” to the Criminal Code;
- ▶ introduce telephone interception powers.

Private entities exercising public functions: Government owned corporations

In submissions to the three-yearly reviews conducted by:

- ▶ the PCJC in 2000–01;
- ▶ the PCMC in 2003–04; and
- ▶ the PCMC in 2004-06

the CMC noted that bodies that carry out public functions had changed from consisting almost entirely of government departments and statutory authorities to include bodies established by government under companies legislation, and other subsidiary bodies intended to conduct commercial activities. The previous CMC submissions noted that Government policies favouring commercialisation and corporatisation had supported the trend in Queensland and other states to create such bodies.

In its 2006 report on its review of the CMC⁸, the PCMC recommended that the State Government give consideration to the extension of the misconduct jurisdiction of the CMC to private entities that exercise public functions and utilise public monies.

In its response to the PCMC’s recommendation, the State Government stated that while it supported the recommendation in principle it could not commit to detailed consideration of the recommendation during the government’s current term.

On 20 March 2007, amendments to the *Government Owned Corporations Act 1993* (GOC Act) took effect to require all existing statutory government owned corporations (GOCs) to convert to company GOCs.

⁸ Report No.71 Three Year Review of the Crime and Misconduct Commission

The Explanatory Notes to the amendment bill set out the policy objective for this change: that all GOCs are to be governed by the same regulatory regime:- the *Corporations Act 2001*. As a result of the 20 March 2007 amendments, the CMC ceased to have jurisdiction for misconduct over GOCs.

In 1993, prior to the introduction of the GOC Act, Queensland Treasury issued a White Paper (Corporatisation in Queensland – Policy Guidelines). The White Paper argued that:

- ▶ the governance provisions of the then Corporations Law and the investigative powers of the then Australian Securities Commission obviated the need for any oversight role by the then Criminal Justice Commission
- ▶ the application of the *Criminal Justice Act* to company GOCs “would be in conflict with the principle of competitive neutrality”.

The GOC Act subsequently designated that company GOCs were not “units of public administration” and statutory GOCs were units of public administration under the Act⁹.

The CMC notes that the jurisdiction of the Australian Securities and Investments Commission (ASIC) now applies to the regulation of corporate conduct of company GOCs under the *Corporations Act 2001*. While the CMC acknowledges that the governance framework of ASIC under the *Corporations Act 2001* would regulate serious misconduct on the part of board members and the most senior executives of a GOC, the practical reality is that ASIC would never become involved in the investigation of misconduct on the part of staff of the GOC.

The unique and significant role of corporate GOCs

The corporatisation of government owned commercial activities has been a common trend in government economic policy for some time now. Professor Paul Finn, now a judge of the Federal Court of Australia, has described GOCs as the “fourth arm of government”¹⁰.

Queensland Treasury’s Office of Government Owned Corporation’s website states that the Queensland Government currently owns 15 GOCs which have a total value estimated to be over \$25 billion.

Corporate GOCs in Queensland operate important infrastructure including:

- ▶ management of public and private investment funds (QIC manages funds of over \$80 billion);
- ▶ energy transmission (Powerlink provides transmission to over half Australia’s eastern seaboard);
- ▶ regional water supply (Sunwater supplies 40% of water used commercially in Queensland and controls infrastructure worth \$2.7 billion);
- ▶ passenger transport (QR Limited controls assets of \$10 billion);
- ▶ port authorities.

⁹ s183 GOC Act 1993

¹⁰ P Finn, Public Trust and Accountability’ Australian Quarterly Vol 65 1993.

Unlike most other corporations, corporate GOCs have social objectives which include non-financial performance targets and community service obligations¹¹ that are not in the commercial interests of the GOC to perform. Important public interest issues may underlie the activities of corporate GOCs in similar ways to those of government departments and agencies. The government compensates corporate GOCs for performing these obligations.

Company GOCs have other unique features that make them different to public corporations, including:

- ▶ the provisions of the GOC Act, including provisions for the discharge of the GOCs community service obligations, may override some provisions in the Corporations Act 2001;
- ▶ although employees of a company GOC are not officers of the public service, provisions in the GOC Act facilitate transfer of leave, superannuation and rights to return to the public service for employees of GOCs who are former public servants;
- ▶ A GOC is a public sector unit for the Equal Opportunity in Public Employment Act 1992;
- ▶ the audit and annual reporting requirements of the Financial Administration and Audit Act 1977 apply to a company GOC including annual auditing by the Auditor-General;
- ▶ the role of the Minister as shareholder is different to that of a shareholder in a public corporation:
 - the Minister may direct the board in respect of certain matters including amending the GOC constitution;
 - there are limitations on the Minister's right to transfer shares in the company;
 - the Minister is accountable to Parliament as an investor not as a manager of the company GOC;
 - the GOC Act provides that civil liability provisions applicable to directors under the *Corporations Act 2001* do not apply to the Minister of a company GOC, as the Minister is not acting as a director.

Recent issues relating to the conduct and integrity of GOCs

The CMC has noted some recent issues which question whether the CMC's misconduct function should apply to properly safeguard the public interest in the integrity of corporate GOCs, at least in respect of activities which would be serious misconduct, had they occurred in units of public administration.

Examples:

- ▶ ICAC in NSW has had an extensive investigation into very serious corruption allegations involving RailCorp, a NSW state-owned corporation, as at September 2008 it had made findings of corrupt conduct against 21 people and has indicated in its final report it will make recommendations about changes to RailCorp's structure and practices to reduce exposure to similar misconduct in the future.

¹¹ See for example Parts 5 and 9 of the GOC Act 1993

- ▶ The CMC in the past has investigated kickbacks and other corrupt activities involving a QRail officer and four external contractors. Charges were laid concerning corrupt arrangements in the awarding of QRail contracts worth almost \$1 million. On 10 September 2005, all five people involved pleaded guilty to fraud with circumstances of aggravation, and were sentenced to terms of imprisonment ranging from two to six years.
- ▶ Prior to QRail's conversion as a corporate GOC, the CMC received an average of 3 complaints per month alleging misconduct within Queensland Rail.

Premier Bligh has recently announced 'in principle' support to access being made available to some activities of GOCs under the proposed rewritten Freedom of Information laws, stating that:

GOCs are an arm of government and given Ministers are ultimately accountable for their activities we agree that they should not be completely exempt from FOI.

Ministerial Media Statement of the Hon. Anna Bligh MP, Premier,
20 August 2008

The CMC considers that further consideration is warranted as to whether the public interest in GOCs requires additional safeguards which could be achieved by bringing serious or systemic misconduct in GOCs within the ambit of the CMC's misconduct function. Under this function the CMC could assist GOCs capacity building to deal with and prevent misconduct and provide scrutiny over serious official misconduct.

The CMC questions whether the exclusion of GOCs from its misconduct function is adequate to ensure the level of integrity and accountability expected by the public.

How the CMC may operate to prevent and deal with misconduct in GOCs

One of the safeguards which could be introduced to protect GOCs against misconduct would be to impose a mandatory obligation upon the chief executive officer of a corporate GOC to report particular types of suspected official misconduct to the shareholding Minister. The Minister could then consider these reports and decide whether or not they should be referred to the CMC to deal with according to its misconduct function. A new provision of the Act would be necessary to give the CMC jurisdiction to deal with the matter upon referral from the Minister.

The type of allegations of serious official misconduct by officers of a GOC that the CMC would be most concerned about would be further developed, but may include such conduct as:

- ▶ failure by senior employees to disclose relevant information or conflicts of interest;
- ▶ secret commissions related to contracts;
- ▶ corruption relating to contracting and tender processes; and
- ▶ misuse of GOC assets or information.

The types of allegations could be prescribed by regulation.

These safeguards are part of the CMC's approach to misconduct and integrity in other government entities but do not presently exist for any GOC in Queensland.

There is currently little incentive for a chief executive officer of a GOC to make a complaint about serious misconduct to the Board, the shareholder minister or even perhaps the Premier. Chief and senior executive appointments to a corporate GOC must be approved by a shareholding Minister prior to the Board making appointments. As the board of directors itself is effectively capable of appointment or dismissal by the government of the day, the political sensitivities are likely to be not conducive to reporting anything which may be taken to reflect adversely on the management of the GOC or its shareholder minister.

In addition, if a chief executive officer of a corporate GOC was to make a complaint about serious misconduct to the Premier or to the Queensland Police Service, the chief executive officer is not afforded the same protection granted to an officer of a public sector entity making public interest disclosure under the *Whistleblowers Protection Act 1994*.

This situation does not encourage the prompt disclosure of improper conduct, or the disclosure of suspicions of improper conduct.

CMC's capacity to monitor and investigate official misconduct in corporate GOCs

The CMC's unique investigative powers place it in a better position than any other Queensland investigative agency, to investigate official misconduct in corporate GOCs. The Independent Commission Against Corruption (NSW) (ICAC) has demonstrated the ability of an independent corruption agency to uncover systemic corruption within corporate GOCs.

While the CMC currently would have jurisdiction to investigate official misconduct if a Minister or Departmental employee was implicated, it has no jurisdiction to investigate where the suspected conduct only involves an officer of a corporate GOC. This appears to be an artificial distinction producing no public benefit. Such an allegation would have to be referred to the Queensland Police Service. This results in duplication of specialist resources.

The CMC remains concerned that it has been given no role to improve integrity and reduce misconduct in GOCs which enter into significant commercial transactions for the benefit of the State of Queensland.

The CMC considers that it would not require any legislative amendment to provide prevention and capacity building advice to GOCs. The CMC's prevention and capacity building publications would be available to GOCs. In addition, s24(h) of the Act enables the CMC to provide prevention advice and training, if asked, to entities other than units of public administration.

What safeguards to corporate GOCs apply elsewhere?

New South Wales

In New South Wales, ICAC has jurisdiction over state-owned corporations. ICAC has jurisdiction in respect of “public authorities” which includes government owned corporations and people who have “public official” functions¹². In addition the Auditor General has the powers of a company auditor in addition to other reporting responsibilities in respect of company government owned corporations under the *State Owned Corporations Act 1989*.

ICAC has regularly investigated activities of GOCs relating to serious allegations of corruption. In its research and prevention activities, ICAC has reported on systemic issues relating to GOCs. Its report on profiling corruption includes a section on corruption in government owned corporations.¹³

Western Australia

The 2007 Archer Review of the *Corruption and Crime Commission Act 2003* (WA) considered whether the Corruption and Crime Commission Western Australia (CCC) should have jurisdiction over private entities executing public functions.

The CCC made submissions to the review that the definition of “public officer” should be expanded to cover some classes of people who perform functions similar to those performed by public officers whose conduct is within the jurisdiction of the CCC. The CCC stopped short of recommending the extension of its jurisdiction over all private entities executing public functions on the basis that it is a relatively new organisation and would require significantly more resources to extend its jurisdiction at this point.

The review has recommended that jurisdiction should be extended once further investigation is undertaken of the resource implications of extending the CCC’s jurisdiction to particular classes of persons who perform public functions in private entities.

Commonwealth

The main safeguard for Commonwealth GOCs is the Auditor General who conducts both financial audits and performance audits (the latter when requested to do so by the Finance Minister). In addition there is general oversight by the Senate Standing Committee and Joint Parliamentary Committee structure within Commonwealth Parliament.

In addition, other Commonwealth oversight Acts such as the *Ombudsman Act 1976*¹⁴, the *Freedom of Information Act 1982*, the *Privacy Act 1988* and the *Administrative Decisions (Judicial Review) Act 1977* apply to Commonwealth government controlled companies to varying extents but generally for all activities other than commercial activities conducted in competitive markets.

¹² S3 *Independent Commission Against Corruption Act 1988* (NSW)

¹³ 2005 report “Profiling the Public Sector: functions, risks and corruption resistance strategies” ICAC

¹⁴ For example, under s3A a Commonwealth controlled company is a prescribed authority unless excluded by other provisions.

Proposed Role for the CMC

The CMC considers that the most appropriate model for the exercise of its jurisdiction is to have its misconduct jurisdiction in respect of corporate GOCs enlivened upon referral from the shareholding Minister, as described above, rather than to declare all corporate GOCs to be units of public administration within the meaning of the Act.

The CMC investigates less than two (2) percent of allegations of misconduct referred to it. Its principal role in relation to corporate GOCs would be to investigate the most serious allegations of official misconduct referred by the Minister.

A role for the CMC focussed on improving integrity and reducing misconduct within corporate GOCs, should be seen as just as important to enhancing public confidence as is the CMC's role in improving integrity and reducing misconduct within units of public administration. Such a role would complement the statutory regulatory regime of the *Corporations Act 2001* and the *Government Owned Corporations Act 1993* applicable to corporate GOCs.

The CMC continues to be of the view that corporate GOCs as private entities that receive public funding or utilise public infrastructure, to carry out public functions, should be subject to the CMC's misconduct jurisdiction.

The CMC seeks the Committee's support for an obligation to be placed on the CEO of a GOC that receives public funding or utilises public infrastructure, to carry out public functions, to report serious allegations of misconduct to their shareholding minister. The minister may then choose to refer it to the CMC for investigation.

Spousal privilege

Previous support by the PCMC to abrogate spousal privilege for CMC investigations

The CMC notes the support given by the PCMC as reflected in Report No 71 to recommend amendments to the Act to clarify that a witness appearing before a CMC investigative hearing should not be permitted to refuse to answer a question on the ground of spousal privilege. The response from the Queensland Government did not support the proposed amendments to the Act as being necessary.

Recent communications with the Department of Justice and Attorney-General have indicated that the Queensland Government is reviewing its position in relation to:

- ▶ whether a witness attending a CMC hearing should be entitled to refuse to answer questions on the ground of spousal privilege; and
- ▶ appropriate safeguards to attach to any evidence given by a witness compelled to give evidence against their spouse.

2005 - the recognition of spousal privilege

In 2005, the Queensland Court of Appeal in *Callanan v B* (2005) 1 Qd R 348:

- ▶ recognised spousal privilege as a common law substantive right; and
- ▶ determined that a witness attending a CMC crime hearing could refuse to answer a question on the ground of spousal privilege.

While the Court of Appeal said, ‘*it seems improbable that this was the legislative intention*’ of s190 of the Act, it determined that the definition of ‘privilege’ in Schedule 2 to the Act rendered the meaning of s190 ambiguous. The Court said:

Interpreted literally, however, it has the consequence of disempowering a person from refusing to answer a question only on the ground of self-incrimination or legal professional privilege, while allowing other forms of privilege recognised at common law, including spousal privilege to remain untouched.

The Court of Appeal’s decision in *Callanan v B* results in witnesses appearing before misconduct hearings being entitled to refuse to answer questions on the ground of spousal privilege¹⁵.

Since *Callanan v B*, a witness attending a CMC investigative hearing is:

- ▶ required to answer a question which may incriminate them; but
- ▶ not required to answer a question which may incriminate their spouse.

The effect of the application of spousal privilege upon CMC hearings

Since the decision in *Callanan v B* three (3) years ago, the CMC’s practice in most cases has been to avoid calling spouses to investigative hearings.

The ability of the CMC to ‘get to the truth’ about major crime and official misconduct has been curtailed by the ability of witnesses to claim spousal privilege. Claims of spousal privilege by witnesses appearing at CMC hearings have increased and there is scope for spousal privilege to be abused to enable witnesses to avoid answering questions which may incriminate themselves.

Claims of spousal privilege may prevent the CMC from effectively dealing with investigations into public crises such as terrorism threats or food tampering. In the past, CMC investigative hearings have been used to quickly identify suspects, to enable investigative efforts to concentrate on those suspects and reduce the threat to the public. At such hearings, the CMC will be unable to test the truth of information supplied by a suspect (such as evidence of an alibi) by examining the suspect’s spouse.

As time progresses, the manner and situations in which spousal privilege can be utilised to avoid answering questions only increase. The situation requires urgent redress.

¹⁵ See *Witness D v Crime and Misconduct Commission* (2008) QSC 155

Spousal privilege cannot be claimed by witnesses appearing in hearings conducted by other integrity agencies

Spousal privilege cannot be claimed by witnesses appearing before investigative hearings conducted by:

- ▶ the Australian Crime Commission (ACC)
- ▶ the New South Wales Crime Commission (NSWCC)
- ▶ the Independent Commission Against Corruption (ICAC); or
- ▶ the Corruption and Crime Commission of Western Australia (CCC).

This is of particular significance to crime investigations undertaken by the CMC in conjunction with an interstate agency, such as the ACC or the NSWCC. The result is that:

- ▶ a spouse appearing as a witness before a CMC investigative hearing may refuse to answer questions at that hearing about the disappearance of their own child; paedophilic conduct of their spouse; or the whereabouts of their spouse at a particular time on the ground of spousal privilege; but
- ▶ that same witness appearing before an ACC investigative hearing about the same investigation, would be required to answer questions about those matters.

Spousal privilege is a claim maintained only by married persons

Spousal privilege is not available to persons in de facto relationships.

A witness before a CMC hearing who is married does not have to answer the same questions that a de facto spouse appearing before a CMC hearing must answer.

The need for clarity in relation to claims of privilege which may be made by witnesses appearing before CMC hearings

The decision in *Callanan v B* highlighted a further defect in sections 190 and 192 of the Act: that there may other common law privileges which a witness may rely upon to refuse to answer a question.

While it is difficult to provide examples of what these common law privileges may be, it was not until 2005 that spousal privilege was recognised as a common law privilege.

The Act requires clarification to make clear the only grounds of privilege which a witness may rely upon to refuse to answer questions at a hearing.

The CMC seeks the committee's support for appropriate amendments to the Act to:

- ▶ ***clarify that a witness cannot refuse to answer questions at a CMC hearing on the ground of spousal privilege;***
- ▶ ***expressly nominate those grounds of privilege which a witness may rely upon to refuse to answer questions at CMC hearings; and***

▶ *expressly abrogate the right of a witness to rely on all other common law grounds of privilege to refuse to answer questions*

Telephone interception powers

Queensland legislation will be required to enact equivalent relevant provisions of the *Telecommunications (Interception and Access) Act 1979* (Cth) (Commonwealth TI Act) to enable the CMC and Queensland Police Service to be declared “interception agencies” under the Commonwealth TI Act. During 2007 and 2008, the CMC consulted with JAG on consultation drafts of proposed legislation to introduce the power to intercept telecommunications in Queensland.

The approach of the Queensland Government differs from that of other States and the Commonwealth as it intends to include the role of the Public Interest Monitor (PIM) as an additional review mechanism or “front end” safeguard at the time a warrant application is made to a court. The proposed role of the Queensland PIM, has been a major obstacle in enacting Queensland legislation for TI as the Commonwealth TI Act has no provision for this additional level of accountability.

On 28 August 2008, the Premier of Queensland announced that she had received correspondence from the Prime Minister advising that the Commonwealth Government intended to amend the Commonwealth TI Act to accommodate the role of the Queensland PIM. This amendment to the Commonwealth legislation will enable the Queensland Government to introduce its proposed Bill for telecommunications interception into the Queensland Parliament.

The value of telephone interception powers has been recognised by all law enforcement agencies in Australia, and by previous committees which have reviewed the CJC and CMC. The CMC and the CJC have received the full support of the PCMC and PCJC in seeking TI powers over many years, as is evident from the following committee reports:

- ▶ Report 29 1995 – a review of the CJC’s report on telecommunications interception and investigation in Queensland (PCJC)
- ▶ Report 45 June 1998 – Three yearly review of the CJC (PCJC)
- ▶ Report 50 1999 – A report on the introduction of the telecommunications interception power in Queensland (PCJC)
- ▶ Report 55 March 2001 – Three yearly review of the CJC (PCJC)(Fourth report)
- ▶ Report 64 March 2004 —Three-yearly review of the CMC (PCMC) (Fifth report)
- ▶ Report 71 October 2006 – Three yearly review of the CMC (PCMC) (Sixth report)

In the last four (4) of these reports the Committees recommended that the CJC/CMC should be able to operate its own separate interception facility and receive adequate funding to do so. Committees have also noted that, wherever appropriate, the CMC should cooperate with other agencies to the fullest extent possible, with a view to maximising efficiencies and minimising costs.

Implications for the CMC of being granted TI powers

The CMC considers that its own interception facility should be separate from that of QPS for reasons which include:

- ▶ confidentiality and security;
- ▶ lines of accountability; and
- ▶ the difficulty of determining relative priority at times of high demand for use of the facility

In addition, it will be important to ensure that there is no public perception that when the CMC is investigating police misconduct, the investigation could be compromised in any way by QPS employees associated with any shared QPS/CMC interception facility. The CMC acknowledges that it will work co-operatively with the QPS in respect of some aspects of TI, for example, collaborating and sharing information on technical and legal issues and staff training.

The CMC considers that it is also more consistent with its functions, the intrusive nature of the powers and the legal framework supporting TI under the legislation, if the responsible Minister for the Queensland telecommunications interception legislation is the Queensland Attorney-General.

The CMC will investigate the feasibility of sharing a telecommunications interception collection facility with another state integrity agency or a federal agency, both as a short term and longer term solution.

The strict legal compliance obligations, audit and reporting requirements under the Commonwealth and State TI Acts will be of critical importance to the success of the CMC's access and use of TI powers. The CMC's internal processes will be developed in collaboration with what is regarded as "best practice" within other agencies that have had many years of experience implementing TI facilities and ensuring that adequate safeguards are put in place to manage internal organisational compliance and risk.

The CMC is already an active participant in national forums of both law enforcement agencies, government agencies and communications industry players which share technological developments and other operational and legal information related to telecommunications access including TI. The CMC will continue to be represented at these forums and will now be able to increase its participation in issues related to TI.

Benefits of TI to the CMC

Although not a panacea for all our investigative needs, telecommunications interception is an extremely efficient and safe covert strategy that allows more informed and selective use of other surveillance and investigative strategies. Compared with some listening devices, telecommunications interception consistently produces high-quality evidence, which is often far more convincing because it records both sides of a conversation.

For some time now in certain CMC investigations, telephone intercept product can be obtained through joint investigations with federal and interstate law enforcement agencies, which have TI powers already. However, this access has not been available for the vast majority of investigations conducted by the CMC.

The CMC acknowledges the support from the current and previous committees with regard to telecommunications interception powers, and seeks the committee's continued support in recommending that:

- ▶ *funding be made available for the CMC to establish its interception facility*
- ▶ *the CMC's TI facility be controlled separately from that of the Queensland Police Service.*

Uniform procedures related to the CMC's major crime and misconduct powers

In 2001, when the CJC and QCC merged to form the CMC, the Explanatory Notes to the *Crime and Misconduct Bill 2001* set out the objective of the merger as:

To repeal the Criminal Justice Act 1989 and the Crime Commission Act 1997 and replace them with new updated legislation merging the previous Criminal Justice Commission (CJC) and Queensland Crime Commission (QCC) established under those Acts into a new, refocussed commission aimed at corruption prevention and enhancing the integrity of the public sector as well as the previous major and organised crime and paedophilia functions of the QCC.

The bill establishes a new "Crime and Misconduct Commission" (the commission), integrating the functions of the QCC and CJC, with an enhanced focus on core functions. It also recognises long standing arrangements for the resolution of police misconduct, giving the Queensland Police Service (QPS) more responsibility, but maintaining a strong monitoring role for the commission.

In merging together the functions and powers of the QCC and the CJC, there was no legislative intention to change the core functions of either commission – the merger was expressed to be for administrative convenience. Accordingly in merging the provisions of each commission's acts into one act, the drafter of the Act adopted the approach of wherever possible, preserving the existing provisions related to the QCC's crime function and the CJC's misconduct function. Later, when the civil confiscation function was given to the CMC, further provisions were added to the Act relating to the exercise of powers in respect of civil confiscation functions.

One result of the drafting style adopted has resulted in Chapters 3 and 4 of the Act containing separate provisions for compulsory powers, hearings and privilege claims relating to crime and witness protection, misconduct and confiscation investigations.

This method of bestowing powers is considered to be an unnecessary duplication which at times, makes interpretation of the Act more complex. Any rationale for the differences in the provisions is largely historic rather than practical. The CMC considers that for some sections of the Act, more generic provisions applicable to all its functions could be developed.

Different provisions apply according to the CMC's functions in respect of the following current provisions in Chapter 3 and 4¹⁶:

- ▶ Notices to Produce and Notices to Discover: s.74, s.74A, s.75;
- ▶ Procedures on claim of privilege for documents produced: Division 3, Subdivision 1, 1A & 2;
- ▶ General power to seize evidence: s.110, s.110A and s.111;
- ▶ Refusal to answer questions at a hearing: s.190 & s.192;
- ▶ Deciding claims of privilege at a hearing: Division 4 Subdivision 1, 1A & 2;
- ▶ Legal costs of appeal to court on privilege claim at hearing: s.205, s.196(7).

The CMC has developed its management processes to apply consistently across the functional areas of the organisation and separate provisions relating to the exercise of the same power often creates inefficiencies and other difficulties, such as:

- ▶ Each functional area requires slightly different procedural guidelines, document templates, and variations to document management systems to reflect what are essentially the same powers under a different provision for each functional area.
- ▶ CMC staff are encouraged to broaden their experience by moving around the different functional areas in the CMC and staff in some areas support various functional areas. The current different provisions for each functional area can lead to confusion, errors and additional time to check the Act.
- ▶ When courts make decisions in respect of a provision related to one functional area, because the language used in the provision is not in the same language as for the equivalent provision for another functional area, this may lead to uncertainty as to whether the decision is applicable to the other functional area.
- ▶ The CMC often deals with legal practitioners who represent different clients in various matters the CMC is investigating. Legal practitioners sometimes wrongly assume the provisions related to certain powers operate consistently across the various functions of the Commission.

The development of uniform provisions with generic application to the CMC's powers will facilitate more efficient processes and better compliance by persons the subject of the CMC's powers.

The CMC seeks the committee's support for a review of Chapter 3 and 4 powers in the CM Act, to develop uniform provisions for the exercise of the CMC's powers.

Misconduct in public office

In jurisdictions which retain common law criminal offences, the offence of "misconduct in public office" can be prosecuted. In some such jurisdictions (New South Wales, Victoria, Hong Kong and the United Kingdom) there have been successful prosecutions of misconduct in public office offences in recent years, in some cases, as common law offences. There has been an increase in the number of prosecutions of the offence in recent years in some jurisdictions. Analysis of the case law indicates that there is a sound basis for such an offence at common law.

¹⁶ Powers which have been separated according to CMC function for the purposes of giving effect to the Cross-Border Law Enforcement Legislation Amendment Act 2005 have been excluded from this analysis.

The CMC suggests that consideration be given to the enactment of such an offence as part of Chapter 13 of the *Criminal Code*. This would more comprehensively codify the common law relating to corruption and abuse of public office.

Elements of the common law offence of misconduct in public office

Carter’s Criminal Law of Victoria sets out the elements of the common law offence as follows:

- (i) *the accused in the exercise of duties in his or her public office;*
acted or failed to act;
the act or omission arose from improper motive;
the act or omission so injures the public interest that the punishment is warranted.” [140,810]

It is noted in Carter’s commentary that financial gain, dishonesty and corruption are not elements of the offence, although they are often associated with the most serious levels of this type of misconduct.

Scope of the present corruption and abuse of office offences in Chapter 13 of the Criminal Code

The scope of the offences in the existing sections 87 to 97 of the Criminal Code can be quite limited and most involve an element of benefit gained or given or detriment caused corruptly.

It is suggested that a broader offence would cover any serious misconduct by a public officer that is unlawful and in breach of duty, without the element of benefit or detriment to reflect the common law offence of “misconduct in public office”. The scope and nature of the common law offence has recently been judicially considered in some of the jurisdictions where it remains as an offence.

Case law from other jurisdictions

Courts have accepted that the common law offence is a broad generic offence, capable of covering a wide range of misconduct by public officers. The offence involves corruption or abuse of trust placed in an office holder and does not primarily involve abuse of trust for financial gain¹⁷.

The seriousness of the common law offence in terms of the impact on public confidence of an abuse of trust by a public officer is also reflected in sentencing decisions of the courts. In one recent case, the Court of Appeal in Victoria re-sentenced an appellant convicted of 10 counts of misconduct in public office to up to three (3) and a half years imprisonment on each count with a total effective sentence of five (5) years imprisonment¹⁸. In Victoria the common law offence of misconduct in public office carries a maximum penalty of 10 years imprisonment (s.320 *Crimes Act* 1958 (Vic).

¹⁷ For example: South Australian Court of Appeal in *Question of Law Reserved (No 2 of 1996)* 88 A CrimR 417 per Olsson J and the Victorian Court of Appeal in *Director of Public Prosecutions v Christopher Gerald Marks* Nettle JA

¹⁸ R v Mathew James Bunning (2007 VSCA)

Examples of conduct prosecuted as “misconduct in public office” elsewhere, which may not be covered by Chapter 13 Criminal Code offences

- ▶ An off duty policeman’s misconduct in accepting free dinners and sexual services from sex workers arranged by a night club owner in circumstances where the police officer was under a duty to arrest the night club owner for offences, was held to be a misuse of his rank or capacity as a police officer¹⁹.
- ▶ Police officer accessing police computer systems to provide information to a known drug dealer²⁰.
- ▶ Police officer accessing police computer systems to provide information to a “friend” about one of his friends, when he did not know the friend was under investigation, but did know that he was trafficking in drugs²¹.
- ▶ Police officers gaining access to confidential information which was passed on to a private investigator (without reward)²².
- ▶ Police officer in the course of duty took no action to intervene in an assault on a victim which proved fatal²³.
- ▶ Police officer in the course of duty accompanying another officer who represented a document to be a search warrant, was present when another officer extorted funds from a victim and seized cannabis without recording as police property. There was no intention on the part of the acquiescing police officer to share in the proceeds of the other officer’s misuse of authority²⁴.
- ▶ Public servant who as the property manager for a government department exerted improper influence over the award of contracts to a company in which the brothers of his sister-in-law held a financial interest²⁵.

Other examples - based on cases not prosecuted or prosecuted under other provisions by the CMC

The following are examples of alleged criminal misconduct by public officers investigated by the CMC which may be unlikely to fall within the current Chapter 13 *Criminal Code* offences:

- ▶ An off duty policeman’s serious misconduct where the behaviour is a misuse of his rank or capacity as a police officer e.g.: off duty police officer who contacted drug addicts he knew from their association with police inquiries, to request sexual favours – unsuccessfully prosecuted as procurement of a female for sexual activity.
- ▶ police officer engaged in recruitment of covert informants, who under the pretence that it was a requirement for the position, cut off samples of pubic hair of female recruits – prosecuted as stealing offences.
- ▶ Police officers who arranged for phone calls of prisoners to external persons to be made via diversion from a police station phone. (Under the Arunta system calls to a police station by a prisoner are not required to be recorded).

¹⁹ *Sin Kam Wah and Anor [2005] HKCFA 21*

²⁰ *R v. Mathew James Bunning (2007) VSCA 205*

²¹ *DPP v Christopher Gerald Marks, Court of Appeal Victoria, 2005*

²² *Question of Law Reserved (No 2 of 1996)*

²³ *R v Dytham [1979]1QB 722*

²⁴ *DPP v Mark Armstrong Court of Appeal Victoria, 2006*

²⁵ *Shum Kwok Sher v HKSAR*

- ▶ A senior public servant provided information to a company director about companies to which contracts had been granted by his Department. The director then made approaches to the companies to acquire them. After the public servant resigned, he then acquired shares and became a director of the entity which had purchased the companies.

While the selection of the appropriate criminal charge is a matter for the ODPP based on the facts of each case, it is suggested that the absence of a general misconduct in public office criminal offence does not enable the courts to fully consider the underlying abuse of trust and misuse of position which may not be reflected in some of the alternate charges laid in these cases.

.In their work analysing English authorities on the common law offence of misconduct in public office, Colin Nicholls QC et al²⁶ note:

“ ... prosecutors have recognized the value of the misconduct in a public office offence to cover a variety of circumstances which could not necessarily be reflected by other charges. In particular the passing on of confidential information (in circumstances where an Official Secrets Act offence is not made out and where the non-imprisonable offence under section 55 of the Data Protection Act 1988 would be inappropriate) from police officers to private investigators or other associates; activity ... where a gross breach of trust has taken place which would not otherwise amount to a criminal offence; and in circumstances where perverting the course of justice has occurred, but the perverting offence would not necessarily be capable of proof (for instance, where a fictitious ‘course of justice’ had been created for the purposes of an integrity test). ”

The CMC seeks the Committee’s support for the introduction into the Criminal Code of a criminal offence of misconduct in public office.

OBTAINING ADVICE FROM THE ODPP BEFORE CHARGING - UPDATE

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

The CMC has developed and implemented a policy in relation to the classes of misconduct matters that should continue to be referred to the DPP for consideration of prosecution proceedings, and that in other cases seconded police officers at the CMC can, with the Chairperson’s approval, prefer charges.

The Prosecution Protocol Policy provides that the CMC will report to the DPP under s.49(2)(a) of the Act where the matter reported upon is:

- ▶ likely to attract considerable public interest;

²⁶ Colin Nicholls QC, Tim Daniel, Martin Polaine, John Hatchard *Corruption and Misuse of Public Office* 2006 at p.82

- ▶ one where the circumstances may warrant the DPP exercising the discretion not to prosecute although sufficient evidence exists;
- ▶ one on which the CMC seeks the DPP's advice for any reason.

In the situation where the CMC seeks the DPP's advice, the Chairperson of the CMC will undertake to liaise with the DPP prior to referring such a matter.

In all other misconduct matters where the Chairperson is of the view that consideration should be given to prosecution proceedings, the Chairperson may refer the matter to an appropriate police officer within the CMC for such consideration and, if considered warranted by that officer, for the preferment of the appropriate charges.

The above protocol with the ODPP appears to be operating reasonably well and satisfies the requirements of both organisations.

The co-operative process will generally avoid any necessity to publicise a referral to the ODPP. It is, of course, possible that on rare occasions the CMC may have to consider whether to announce a referral to the ODPP, but the CMC is of the view that it is not feasible to attempt to establish detailed guidelines which would universally govern what will be a rare event occurring in unforeseeable circumstances. The only factor which would always be considered by the CMC is the public interest.

The following is a brief summary of reports made to ODPP for prosecution advice since the protocol has been operating:

Reports to ODPP for prosecution (s49(2)(a)) for the period 1 October 2006 to 30 September 2008

There were 10 matters reported under the Prosecution Protocol Policy to the ODPP for prosecution advice

- ▶ In 5 matters advice was received within 1-7 days of the report to ODPP. Charges were laid by the CMC in 4 of those matters. Advice not to prosecute was received in 1 matter.
- ▶ In 2 matters advice was received within 30 days of the report to ODPP and charges were laid by the CMC in those matters.
- ▶ In 3 matters the referral for advice was made on 15 November 2007 and advice had not been received as at 30 September 2008. There are however, unusual complexities in these matters.

There were 8 matters where a CMC officer laid charges before referring a report in the matter to the ODPP²⁷.

In addition there were 6 matters reported to other prosecuting authorities during the period:

- ▶ 3 matters referred to the Commonwealth Director of Public Prosecutions for prosecution on 24 July 2007. (In 2 of those matters advice had not been received as at 30 September 2008).
- ▶ 3 matters were referred to the Department of Local Government and charges were laid.

²⁷ This number could be inaccurate, as CMC systems may not have recorded this information.

Chapter 3: Combating major crime

This chapter broadly examines the CMC’s major crime jurisdiction, and then looks in some detail at the four kinds of criminal activity that fall under the umbrella of major crime:

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

The chapter goes on to explain the important roles played by strategic intelligence (including ‘human sources’) in combating major crime, and provides an overview of the CMC’s work in crime research and prevention.

JURISDICTION

The CM Act gives the CMC investigative powers that are not available to the QPS. The CMC is not, however, an alternative police service, nor does its Act intend it to be. Rather, the scope of its activities is limited to referred major crime.²⁸ Because it is not funded or resourced as a police service, the CMC’s effectiveness depends on its partnerships with the QPS and other law enforcement agencies, its specialist multidisciplinary approach to investigations, and the focused use of its special powers.

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

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

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

²⁸ Major crime refers to criminal activity involving an indictable offence punishable by a term of imprisonment of not less than 14 years, or criminal paedophilia, organised crime or terrorism.

Umbrella referrals

The CMC's ability to contribute to the fight against major crime in Queensland is facilitated by the existence of several broad 'umbrella' crime referrals in the areas of organised crime, criminal paedophilia and terrorism. These broad referrals from the Crime Reference Committee allow individual cases of suspected criminal activity that fall within the terms of the referral to be investigated without the necessity of a specific referral from the committee.

The chief umbrella referrals are as follows:

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

The importance of a capacity to intercept telecommunications when investigating organised crime is referred to in Chapter 2 of this submission. It is further illustrated in the examples of effective operations given later in this chapter.

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

ORGANISED CRIME

The CM Act defines organised crime as:

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

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

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

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

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

In addition to CMC-instigated operational activity, we frequently respond to requests from the QPS and other agencies to assist in organised crime investigations instigated by them. The assistance sought and provided is often related to the conduct of investigative hearings. An increasing demand for assistance of this kind has contributed significantly to a marked increase in the past year in the number of hearings conducted.

Achievements

Operation CYRENE

In April 2007 the South Australia Police (SAPOL), Drug Investigation Branch disseminated information to the Commission concerning their Operation CYRENE which targets an organised crime group engaged in the large-scale production of cannabis in South Australia and distributed to Queensland.

SAPOL and the CMC entered into a joint investigation agreement and developed associated operational plans. The agreed operational goals centred on the identification of the South Australian based producers of the drug gaining evidence against the principal organisers in that state of facilitating the production of cannabis for the purpose of sale. It was agreed that when both agencies had gained sufficient evidence to support a prosecution in each State, the operation would close with the “take-out” of the courier at a time he met with the Qld principal target.

Financial investigations identified assets to be subject of crime confiscation proceedings. The arrest phase of this operation was conducted in December 2007 commencing with the tactical “take-out” of the courier as he moved to deliver a total of 29 lb of cannabis to various Gold Coast based distributors. The cannabis was found concealed in a modified gas cylinder located in the rear tray of the utility used to transport the drug from South Australia to Queensland.

Soon after the take out of the courier, search warrants were executed at the premises of the Gold Coast targets resulting in the location and seizure of cash totalling \$75,580, small amounts of cannabis and amphetamine, and a concealable firearm.

Of note - one pound of cannabis has a wholesale value of \$3000-3,500. Profits are gained by the trafficker in breaking the cannabis down into smaller amounts of one ounce to be sold for \$250-300 per ounce, that is, \$4,000-5,600.00 per pound. There is evidence that the principal target to be extradited from Adelaide facilitated the transportation of 184 lb of cannabis to Queensland of a value in excess of \$550,000 between January and October 2007.

Two witnesses appeared in CMC coercive hearings, with consideration being given to commencing proceedings for an offence of perjury in respect of both.

Investigators are engaged in the preparation of the brief of evidence with committal/callover proceedings scheduled for the Brisbane Magistrate’s Court in October 2008. To date the total number of offenders arrested is 12 with 22 charges laid and assets restrained to the value of \$1,887,494.86.

Operation CYGNUS

Operation CYGNUS was derived directly from investigations undertaken during the joint CMC/SAPOL Operation CYRENE.

The premise of Operations CYRENE and CYGNUS was that persons in South Australia were collecting hydroponically grown cannabis from a “cooperative” of producers, then transporting the product in cryovac sealed plastic bags to Queensland where it was supplied to persons engaged in its distribution.

This operation was successfully closed in late October 2007. Nine targets were located and charged with 25 drug offences.

Property seized at closure included 38 lb of cannabis of a wholesale value of between \$114,000 and \$133,000, as well as \$169,350 cash. The total value of restrained assets from CYGNUS is \$863,026.82.

Evidence was gathered that the principal targets to be extradited from Adelaide were responsible for the transportation of 267 lb of cannabis (value \$800,000) to Queensland between July and October 2007.

Three witnesses appeared in CMC coercive hearings providing valuable information concerning the operation and the involvement of the principal targets.

The extradition of two South Australian targets was contested. However the matter was determined in that state’s Supreme Court deciding in favour of the prosecution in that the offender was to be extradited to Queensland.

Operation SHOCK

On 5 April 2007 the CMC Crime Intelligence Review Committee (CIRRC) approved Operation SHOCK as a CMC major crime investigation under the Hydra referral in relation to suspected criminal activity on the part of members of the Rebels and Bandidos outlaw motorcycle gangs.

Hearings were held in April 2007, to which four (4) witnesses were called. The immediate focus of these hearings related to the arson of the Rebels Clubhouse at Albion on or about 28 March 2007.

Police subsequently arrested six persons and charged them with the arson.

Further hearings, dealing with the affray at Ningi in early 2007, were held during October 2007. Approximately 18 witnesses, comprising both Bandidos and Rebels gang members, were called.

In January 2008 police charged numerous Rebels with a range of charges relating to the Ningi incident, including the offence of perjury arising from evidence given by various Rebels at the CMC hearings in October 2007.

A further bracket of hearings was held in February 2008 as a result of one of the Rebels "rolling over" and nominating other members involved in the Ningi affray. These further Rebels were called to hearings but none acknowledged their involvement in the incident.

To date there have been 13 arrests and 45 charges laid.

Operation DANSON

Operation Danson evolved as a CMC major crime investigation targeting, conjointly with the ACC and QPS, drug trafficking in south-east Queensland. During an earlier investigation, the supplier of methylamphetamine to the targets was identified as a senior member of a south-east Queensland chapter of an outlaw motorcycle gang. Operation Danson was developed to target this person and his associates, resulting in the dismantling of this network.

Various forms of electronic surveillance combined with physical surveillance identified that the target was supplying substantial quantities of drugs to a number of Queensland-based customers as well as being involved in interstate drug trafficking and distribution.

In July 2006 the NSW Police agreed to the proposal for a joint task force targeting the NSW and south-east Queensland chapters of the gang. The NSW Crime Commission agreed to provide telecommunication interception on identified targets. A memorandum of understanding was formulated, the CMC and NSW Police Force exchanged investigation plans, and the covert phase of the operation continued to gather intelligence and evidence. That phase was closed in February 2007.

At 30 June 2007 the total number of offenders arrested was 38 facing 107 charges including 21 trafficking a dangerous drug and 17 supplying a dangerous drug.

Operation SABRE

Operation Sabre concentrated on a suspected European ethnic-based drug syndicate and successfully dismantled it. The CMC's interest in this network arose out of the execution of a search warrant by members of a regional CIB unit in March 2005. The subject of the warrant had previously been convicted and imprisoned in relation to drug-trafficking charges.

The search was initiated after credible information was received suggesting the individual was involved in trafficking of heroin in the greater Brisbane area. It also appeared that the target was a 'cook' and had an associate who was linked to a business based in Melbourne and Brisbane. Intelligence received through the use of covert surveillance confirmed that the target and his associates were engaging in drug trafficking.

Staff finalised the target profiles and closed the covert phase of the operation in March 2007. A total of 13 offenders were arrested on 64 charges including 13 trafficking charges and 34 charges of supplying a dangerous drug.

Operation NAVAN

This operation which began in September 2005 targeted suspected organised criminal activity involving large-scale trafficking and supply of illicit drugs - in particular, amphetamines. The operation took place in partnership with the QPS, with some involvement from national and interstate law enforcement agencies. Covert methodologies were used and confidential information was accessed. Financial profiling of the key syndicate members was undertaken.

The investigation led to the identification of the persons at the upper levels of the syndicate and the gathering of evidence against them in relation to ongoing involvement in trafficking amphetamine, cocaine and ecstasy. The operation closed with the arrests of a total of 31 people who were charged with a range of offences under the *Drug Misuse Act 1986*, of which 208 offences were for the supply of a dangerous drug.

Operation CANDID

This operation commenced in July 2005 and proceeded jointly with the QPS as a consequence of the receipt and analysis of confidential information relating to the activities of a group of drug offenders on whom the CMC had intelligence holdings.

Through the use of a range of covert investigative strategies, evidence was gathered implicating the principal targets in drug trafficking and property offences.

Search warrants were ultimately executed and five people were arrested on trafficking and other drug-related offences. Further evidence was gathered by the use of the CMC's coercive hearings power.

Operation ECHO PRAWN

Operation ECHO PRAWN was an organised crime investigation targeting the receipt of stolen jewellery by members of a family that owned several pawnbroking, second-hand and jewellery retailing businesses.

In November 2006 the QPS requested the assistance of the CMC with respect to the conduct of coercive hearings. CIRRC approved the request for assistance in December 2006.

Hearings were conducted during March, June, July and August 2007 with eight witnesses called to give evidence.

Police obtained evidence from four witnesses that implicated two of the principal targets in the receipt of over \$300,000 worth of stolen jewellery.

In February 2008, investigating police advised that they had made another arrest as a result of the hearings and that further were to follow. Police advised that the operation had been successful and that it was highly unlikely that there will be the need for further hearings.

The investigation has now been finalised, with the arrest of 3 offenders on 19 charges.

Operation ALPHA SUBMISSION BARRIER

This operation was a “flagship” CMC organised crime investigation which spanned a five-year period from its inception in 2003 through to the sentencing of the primary target in 2008.

This operation commenced as an intelligence probe in July 2003 as a result of an ongoing assessment of the Fortitude Valley nightclub industry by the CMC’s Strategic Intelligence Unit. This assessment identified one Todd Sean Filippa and his associates as being involved in organised criminal activity including trafficking in dangerous drugs in two Fortitude Valley nightclubs owned and operated by Filippa.

The investigation proceeded to operational status in November 2003 and commenced as a joint investigation between the CMC and the QPS.

Between January and June 2004 the investigation identified that the Filippa syndicate was heavily involved in the production and trafficking of methylamphetamine, and that the syndicate was using a clandestine laboratory at a then unknown location in south-western Queensland.

The investigation also identified that the syndicate relied heavily on the use of telecommunications to further their drug production and trafficking activities. Investigators believed that the disruption and dismantling of the syndicate would not be successful without the support of an agency with telephone interception powers.

Between April and June 2004 a number of presentations were made to the Australian Crime Commission (ACC) seeking its involvement as a partner agency in the investigation. In late June 2004 the ACC agreed to undertake a joint investigation with the CMC and QPS. In July 2004 the ACC commenced the interception of telecommunication services used by key members of the Filippa syndicate.

The investigation then identified the location of the suspected laboratory for the large scale production of methyl amphetamine as being on a rural property at Miles. In July 2004 investigators conducted a covert search of the property and located industrial chemicals and equipment consistent with the property’s use as a methyl amphetamine laboratory.

In early August 2004 electronic surveillance identified that the syndicate was making preparations for another methyl amphetamine “cook” at the Miles property. In August 2004 another covert search was undertaken by investigators at the property which identified that the extraction phase of methyl amphetamine production had been commenced. Investigations undertaken during late August 2004 identified that Filippa and four of his associates were on-site actively involved in drug production.

On 27 August 2004 the laboratory was raided by members of the QPS SERT to secure all persons on site. CMC and QPS investigators then discovered one of the largest clandestine laboratories ever located in Queensland. Approximately 2.5 kilograms of “crystal” methyl amphetamine and half a litre of “liquid” methyl amphetamine were recovered. All persons were arrested and charged with serious drug related offences. Initially they were denied bail however each person was subsequently successful in obtaining bail at a later time.

Between September and October 2004 the Filippa syndicate continued to produce and traffic in dangerous drugs, despite the location of the clandestine laboratory in Miles. The ongoing investigation established that the syndicate was making arrangements for the purchase of a pill press machine for \$30,000. In September 2004 a taxi, owned and operated by an alleged syndicate member was intercepted and a pill press machine was located in the boot.

Between October and December 2004 the investigation disclosed that another one kilogram “cook” was being undertaken at an unknown location and the targets were continuing to source precursors for a future “cook”. The location of the new clandestine laboratory was not discovered.

On 8 December 2004 the first phase of the operation was closed down with the arrest of the primary targets for serious drug offences including trafficking and production of dangerous drugs with circumstance of aggravation.

In late May 2005, Filippa was also arrested for lodging a false passport application, preparatory to a plan to flee Australia. Filippa’s bail was then revoked.

Two brackets of hearings were undertaken in relation to this investigation.

The first bracket was undertaken by the ACC after the closure of the first phase of the operation in December 2004. During this bracket seven witnesses were called.

The second bracket was undertaken by the CMC in December 2005 and involved a cooperative witness. This hearing was highly successful.

All secondary targets who had been arrested in 2004 and 2005 were sentenced to periods of imprisonment ranging from three years to eleven years on charges of drug trafficking or producing a dangerous drug. In March 2008 Filippa and his main associate were sentenced to periods of 13.5 years and 5 years respectively. Filippa’s sentence was handed down after a contested sentence hearing of some three to four weeks during which the prosecution evidence was presented by using the electronic brief of evidence format developed by CMC Crime officers. The “e-brief” was itself the subject of favourable comment by the court in terms of its ability to expedite proceedings and save court time.

This investigation was able successfully to target a long-standing criminal network which had managed to successfully evade detection by law enforcement agencies for a number of years. The use of conventional investigative strategies such as intelligence, overt investigation and financial investigation coupled with non-conventional investigative strategies such as telephone intercept product, electronic surveillance and coercive hearings provided investigators with the ability to conduct a well managed and coordinated operation.

This investigation effectively dismantled a major drug distribution network in a timely and cost-effective manner. It has been the most successful CMC organised crime operation to date in terms of the number of persons charged with serious drug-related offences. The operation clearly illustrates what can be achieved by multiagency multi skilled teams working professionally together and demonstrates the close liaison and cooperation that exists between the CMC and other state and federal law enforcement agencies.

In total, the CMC and QPS operations resulted in 99 persons charged with 436 offences.

Operation FOXTROT CONDENSE

This was an investigation of criminal activity engaged in by members of a family and their associates including:-

- ▶ the alleged murder of one man in May 2007
- ▶ the alleged abduction and attempted murder of another man in April 2007 and
- ▶ other suspected criminal activity involving violence, drug trafficking or weapons on the part of family members and their associates.

Four lengthy brackets of hearings were held in this matter during 2007 and further hearings were held during 2008.

To date there have been 2 arrests and 20 charges laid.

Operation SMOKE

This operation was commenced as a probe in an effort to advance a CMC Strategic Intelligence Unit (SIU) target proposal concerning the activities of senior members of the Bandidos OMCG suspected of being involved in the production of and trafficking in dangerous drugs in addition to the commission of serious offences against persons and property through “stand over” tactics including the use of firearms.

In July 2006, Gold Coast Police (Operation HENCH) executed a number of search warrants on residences and business premises of persons who were the subject of a complaint of extortion. As a result, four offenders were arrested and charged with a range of offences including demanding property with threats, grievous bodily harm, drug and property related offences.

Probe Smoke gained operational status in July 2006 after being approved by CIRRC with the Commission’s role being limited to providing intelligence assistance and conducting investigative hearings and financial investigations.

Four coercive hearings were conducted by the CMC between September and November 2006 to examine witnesses concerning their knowledge of the illicit activities of persons pertaining to Operations HENCH and SMOKE. Material gained from these hearings served to focus investigations concerning HENCH and provide intelligence concerning SMOKE.

This operation was successfully closed in November 2007 with a substantial amount of drugs being seized.

14 arrests were made and 27 charges laid. A total of \$146,950 in drugs was seized.

Operation ECHO SLAM

On 27 September 2000 an armed robbery occurred at the business premises of Australian Pharmaceuticals Industries, Richlands. The armed offenders overpowered two security guards and stole large quantities of prescription drugs. During the processing of the warehouse crime scene, one of the target's DNA was recovered. Both of these armed robberies remain unsolved.

A confidential human source provided a statement regarding the criminal activities of the principal target of Operation ECHO SLAM. This statement was provided to QPS investigators attached to Operation ECHO SLAM to commence inquiries seeking further corroboration of the statement and to identify investigative strategies.

An immunity from prosecution for this matter for the human source has been approved by the Attorney-General.

As a result of the information provided by the human source, combined with forensic evidence, the QPS charged the primary target in March 2007 with attempted murder, attempted armed robbery with actual violence whilst armed and deprivation of liberty and armed robbery with actual violence, deprivation of liberty and unlawful use of a vehicle with respect to the Australian Pharmaceuticals Industries robbery.

CMC hearings were held over several days in June 2007 in conjunction with the covert strategies commenced by the police.

Operation ECHO SLAM led to arrests in relation to two outstanding serious armed robbery offences and also disrupted a suspected drug production and trafficking network.

One witness called to a hearing in October 2007 raised a claim of reasonable excuse. The presiding officer ruled against the claim. The hearing was adjourned to enable the witness to obtain advice with respect to an appeal against the ruling to the Supreme Court. The witness did not appeal and returned to a further hearing where he continued to refuse to answer questions. He was certified as being in contempt and a warrant was issued for his arrest.

In March 2008, the witness appeared before Chief Justice de Jersey who found him guilty of contempt and sentenced him to eight months imprisonment.

Four arrests have been made and 40 charges laid.

Operation FOXTROT SACK

Operation FOXTROT SACK was an organised crime investigation being conducted by the CMC pursuant to one of its umbrella organised crime referrals. It was referred to the CMC in March 2008 by the Far Northern Region of the QPS. It related to the suspected production of cannabis, trafficking in cannabis, methamphetamine and MDMA (ecstasy), and money laundering by an established family-based criminal network in Far North Queensland.

Investigating police sought CMC hearings in order to strengthen the current prosecution case, and to identify the nature and extent of the suspected money laundering.

In late April 2008, eight witnesses attended coercive hearings conducted in Cairns. One witness may be subject to perjury charges in due course. One witness who was served with an attendance notice was not called due to agreeing to provide a full signed statement in relation to the matter.

Police later identified two additional hearings witnesses. These persons were called to hearings in Cairns in August and September 2008 respectively. To date 6 arrests have been made and 15 charges laid.

CRIMINAL PAEDOPHILIA

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

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

- ▶ offending by networked or recidivist extra-familial child-sex offenders
- ▶ offending by persons who use the internet as a tool in locating and grooming potential child victims
- ▶ offending by released sexual offenders who are breaching conditions of their release under provisions of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

These matters are investigated pursuant to our umbrella paedophile referrals.

We also have the ability to investigate paedophile matters falling outside the umbrella referrals by seeking stand-alone referrals from the Crime Reference Committee.

The CMC acknowledges that the QPS and its regional Child Protection Investigation Units are better equipped to respond to complaints of intra-familial offending, which continues to represent the bulk of offending brought to the notice of law enforcement agencies.

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

The CMC is conscious of its crime-prevention function in its conduct of paedophile-related investigations, and endeavours to use methods designed to achieve preventive as well as tactical-investigative outcomes. Further details of crime-prevention research are given later in this chapter,

Achievements

Atrax Referral

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

Atrax investigations have a six-month duration at the end of which a new operation is commenced. Since the inception of the Atrax operations in 2000, 18 such operations have been conducted resulting in a total of 97 individuals being arrested on 795 charges.

During the reporting period 26 individuals were arrested on 71 charges, including 32 of which were for possession of child exploitation material and 7 for distribution of child exploitation material.

Artemis Referral

Whilst the Atrax referral provides Cerberus investigators with the ability to conduct internet-related paedophilia investigations, the Artemis referral provides investigators with the ability to conduct non-internet related investigations into criminal paedophilia.

The terms of reference for Artemis are such that the criminal activity being investigated must fall within the following:

- ▶ Investigation of criminal activity which may have been engaged in since 1 January 1990.
- ▶ The said criminal activity relates to offences of a sexual nature committed in relation to children and/or offences relating to obscene material depicting children.
- ▶ The said criminal activity is to have been engaged in by persons who are or who were members of a paedophile network comprising two or more persons, and/or by persons who have offended against or are offending against or may offend against more than one child.
- ▶ The said criminal activity involves a child or children who are not members of the offender's immediate or extended family.

During the reporting period there were five operations and one probe conducted under the Artemis Referral. Eight persons were charged with 224 offences. The offences included rape, indecent treatment of a child under 16, incest, administering a stupefying drug, possess child exploitation material, sexual assault, breach of DPSOA orders, and breach of the Child Protection (Offender Reporting) Act.

Operation AUTUMN

This investigation initially commenced as an intelligence probe in May 2005 but was later elevated to operational status. This probe focused on the activities of a target in North Queensland. This person had been the subject of police intelligence reports for the previous 7 years over concerns that he was involved in child sex offending. He was a known associate of convicted child sex offenders, one of whom was still in prison. This target was also the director of a large internet service provider in North Queensland.

Information suggested that he spent a great deal of time online at home downloading pornography. Information was received from the Brisbane City Juvenile Aid Bureau which suggested that child pornography was supplied to a person in Brisbane and the original source of the child pornography was the North Queensland target. A week of hearings was conducted in Townsville in August 2007. A total of 5 witnesses were called to hearings including the target. The hearings provided intelligence on the activities of these persons in the Townsville area and identified that there was no evidence to substantiate criminal charges against the target. However one of his associates was arrested and charged with 2 counts of possession of child exploitation material as a result of forensic analysis of his laptop.

Operation ARIZONA

Police from the Child Abuse Unit, Ipswich, investigated complaints that a 51-year-old man committed sexual offences against his female cousin in the 1970s and his two daughters when they were children in the 1990s. Due to the lapse of time since the alleged offences there was no medical evidence available to corroborate the complainants' versions of events.

It was alleged that, as children, the man's sisters witnessed him sexually abusing his cousin in the 1970s and that they were also sexually abused by the man. Police approached the sisters. One stated that if police were to call her as a witness she would provide truthful evidence, however she would not implicate her brother voluntarily. The other refused to be involved.

Police sought the assistance of the CMC to progress the investigation through the use of the CMC's investigative hearings powers to examine the sisters and in February 2008, the Crime Reference Committee approved the referral.

Hearings proceeded in April 2008. The first sister gave evidence that supported her cousin's complaint of sexual abuse against her brother. However it became apparent that the second sister was suffering a medical condition and in consultation with investigating officers a decision was made not to proceed with her examination due to a concern that it may prove detrimental to her welfare. The 51-year-old man was arrested and 31 charges laid.

Operation GOLF AGITATE

In 2008 the QPS Task Force Argos commenced an intelligence probe (Operation AGITATE) into the activities of offenders released on supervision orders under the provisions of the *Dangerous Prisoners (Sexual Offenders) (DPSOA) Act 2003* and or the *Child Protection(Offender Reporting)Act 2004*.

Meetings were conducted with senior management attached to State Crime Operations Command, Task Force Argos and Queensland Corrective Services to discuss issues associated with the investigation of paedophile networks which may have been formed between convicted child sex offenders whilst in custody.

In conjunction with Argos team members, systems were developed which provided investigators with a process to identify those persons who posed the greatest risk to the public of re-offending and developing or maintaining paedophile networks.

Targets identified and prioritised through the GOLF AGITATE concept are the subject of investigations and intelligence profiling with the view to identifying the existence of established networks between high risk sex offenders.

To date two targets have been arrested. In May 2008 a target was arrested for possession of child pornography and two breaches of his DPSOA orders. In September 2008 a target was arrested and charged with the indecent dealing of a 13 year old female.

Operation GRAPHITE

This operation focused on the activities of a male 48-year-old target who was arrested by the Logan CPIU in relation to numerous child sexual offences, including rape. The target had previously been arrested in relation to child sex offending, and was currently incarcerated on remand for the present offences committed against a 12-year-old female child.

In addition the target advised police that he used his computers to view and download child exploitation material and to communicate with other men on the internet. It was identified that he preyed on low-income single mothers/parents offering them assistance around the house and with looking after their children. He ingratiated himself with the parents/mothers by mowing their lawns, taking the children on outings, etc. This made it difficult for the children and/or the parents to complain about him as they formed an emotional and financial bond with the target.

The target kept diaries indicating that he was involved with another person who counselled him in the commission of offences, and to whom he had provided information about his offending. The networked aspect of the investigation was undertaken by the CMC.

On 15 November 2007 the offender was charged with 27 offences including indecent treatment of a child under 16 years, rape and indecent treatment of a child under 12 years.

Operation DRAGONFLY

This operation was approved by CIRRC on 26 April 2007. It was a joint operation with the Mackay Child Protection Investigation Unit (CPIU) targeting a child sex offender, aged 44 years, who was arrested in September 2006 by Mackay CPIU. The target was arrested following the receipt of a complaint from a 14-year-old girl who stated that the offender had taken pornographic photographs of her. The complainant advised that the target provided her with alcohol and drugs during the photo sessions and sexually assaulted her. As a result of this complaint, detectives from Mackay CPIU executed a search warrant on the target's home and seized computer equipment, cameras, sex aids, clothing and photographic 'sets' which were used by the target in the production of child exploitation material.

The Mackay CPIU identified a further two complainant girls also aged 15 years who provided statements to the police. As a result of investigations the target was interviewed and arrested on 1 September 2006 with 49 charges relating to images located on his computer through a preliminary SPADA (System Preview and Data Analysis) examination. On 14 September 2006 the target was further charged with 28 charges relating to one of the complainants (1 count of rape) and 18 charges relating to another complainant. The target was also charged with 5 counts of administering a stupefying drug. To date the offender has been charged with a total of 95 charges.

Further investigations identified that the target had a female accomplice aged 21 years who approached the victims on the pretext of taking 'glamour photographs' of the children. She was arrested and charged in November 2007.

To date two targets have been arrested and charged with 128 offences, including possession of child exploitation material, indecent dealing, rape, administering a stupefying drug and indecent treatment of a child under 16.

International Training

During May and June 2006 police officers from the CMC's Paedophilia Investigation Team travelled to the United States to undertake three weeks of intensive training in new and innovative methodologies to investigate online child exploitation to ensure that the CMC remains at the forefront of Australian law enforcement regarding the investigation of internet child abuse. The officers attended the 3rd Annual Silicon Valley Internet Crimes Against Children Conference in San Jose, California. Training streams included a three day interactive on-line laboratory, Yahoo! Investigations, Characteristics of a Child Sexual Predator, Introduction to Peer to Peer Investigations, Blogs, Profiling, Investigating Child Porn Websites, Internet Safety (National Centre for Missing and Exploited Children), Child Victim Interviewing, Newsgroups and other online chat mediums including X-Box Live.

The officers undertook training with the Federal Bureau of Investigation - Innocent Images National Initiative, located in Washington DC and observed the work of the Innocent Images International Taskforce which ensures the sharing of information and identification of offenders overseas. The officers received briefings from Supervisory Special Agents in relation to sex tourism, covert methodologies, online payment methods and child pornography Internet servers. The officers attended the quarterly meeting between federal agencies (FBI, NCMEC, U.S. Immigration and Customs) investigating on-line child abuse. This included briefings at the Customs and NCMEC Centres and FBI Cyber Crime Unit in relation to cross border investigations, Cyber Tips Hotline, Child Abuse Image library, and missing person ageing/regression software.

The three weeks training concluded with a week at the San Jose Police, Child Endangerment Unit, Internet Crimes Against Children Task Force. The week covered on-line peer to peer investigations, target development and standing Task Force operational procedures. In addition to establishing a strong international law enforcement network, team members returned with an extensive skill base to continue successfully targeting recidivist on-line child sex offenders. The team has since generated multiple Australian targets for law enforcement action.

One member of the team remained in the United States for further extensive training, including the Advanced Internet Training Course conducted by the FBI in Washington DC, work experience with the Immigration and Customs Enforcement Cyber Crimes Centre, Child Exploitation Section, Washington DC and attendance at the 5th Annual Internet Crimes Against Children National Conference in conjunction with the 18th Annual Crimes Against Children National Conference, Dallas, Texas.

SERIOUS CRIME

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

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

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

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

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

Offences that have been the subject of serious crime referrals since May 2006 include actual or suspected murders, other unlawful killings, the doing of grievous bodily harm, extortion and rape.

Hearings are held at the CMC’s premises in Brisbane and at any other place in Queensland considered appropriate in the particular matter for reasons of efficiency or otherwise. Since May 2006 hearings have been held in Townsville, Cairns, and Toowoomba, as well as in Brisbane.

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

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

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

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

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

In the period under review the Crime Reference Committee referred 24 serious crime investigations to the CMC. Some examples are provided below.

Achievements

Operation HUON

Operation HUON was a serious crime investigation of extortion at the Gold Coast in January 2006. This matter was referred to the CMC for investigation at the request of the Commissioner of Police in July 2007.

Hearings were conducted in October 2007. Seven witnesses gave evidence, including three persons charged with respect to the alleged offence.

The three persons charged were committed for trial in January 2008. Subsequent to the hearings a fourth person, who was a witness at the hearings, was also charged, bringing the total of arrests to 4 and the charges laid to 13.

Operation FOXTROT GRASSY

This was an investigation of the murder of an 18 year old man on a rural property in south-western Queensland in July 2007.

This matter was referred to the Commission for investigation at the request of the Commissioner of Police in September 2007.

The man's 16-year-old brother had been charged with the murder and an older associate had been charged with being an accessory after the fact to the murder. The CMC held hearings in Brisbane and Toowoomba in December 2007 to explore a suspicion that the associate may have had a greater involvement in the matter than had been established by the police investigation. In the event the hearings did not yield any evidence to substantiate the suspicion and in that sense assisted greatly in clarifying the respective criminal culpability of the persons allegedly involved.

Operation YUGO

This was an investigation into the suspected gang-rape of a 17-year-old female in a Brisbane hotel room in July 2007.

This matter was referred to the CMC at the request of the Commissioner of Police in October 2007.

Hearings were held over two weeks in November and December 2007. The hearings were very successful in progressing the investigation and further hearings were held in February 2008.

Subsequent to the hearings the QPS charged ten (10) male persons with the rape of the complainant in this matter.

Operation DISTANT THUNDER

This was an investigation of the rape of a female in her own home near Ipswich in December 2006. A suspect had been charged with the rape, but it was believed that certain persons associated with him were in possession of information that would substantially strengthen the prosecution case.

The matter was referred to the CMC for investigation by the Crime Reference Committee in February 2007.

Hearings were held in March 2007, to which three witnesses, including the suspect's de facto wife, were called. His de facto wife provided him with an alibi at the time of the offence, and maintained this version in her evidence to the CMC.

The suspect, whilst on bail awaiting trial on this rape charge, was later arrested by police and charged with two further alleged rapes committed in Brisbane during September 2007.

In the aftermath of his arrest, his de facto wife contacted police and admitted having lied at the CMC hearing by purporting to give a false alibi for the December 2006 rape. She went on to provide information as to incriminating statements made to her by the suspect shortly after that rape.

The suspect subsequently pleaded guilty to the Ipswich rape and one of the Brisbane rapes and is due to be sentenced in December 2008.

His de facto wife also pleaded guilty to four charges of perjury arising from her false evidence to the CMC, and in August 2008 was sentenced to 18 months imprisonment with a recommendation for parole after 4 months. She is currently appealing her sentence.

Operation GOLF DORSAL

This was an investigation of the alleged unlawful killing of one man and the doing of grievous bodily harm to two of his associates at a Gold Coast hotel in May 2008. Shortly before his death the deceased and his companions had been refused entry to the hotel and an altercation then ensued between these persons and numerous crowd controllers at the hotel.

In June 2008 the Crime Reference Committee referred the matter to the CMC for investigation.

Between June and August 2008 the CMC held approximately five weeks of hearings, to which some 22 witnesses were called.

The hearings significantly advanced the investigation and in early September 2008 police charged three crowd controllers with the murder of the deceased.

TERRORISM

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

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

It accordingly remains the case that any CMC investigation of terrorism, acts preparatory to the commission of terrorism or acts undertaken to avoid detection of or prosecution for terrorism, will occur on receipt of a request from the QPS. The CMC remains at a high state of readiness to respond to such requests.

Achievements

Operation ECHO SHERLOCK

This operation demonstrated the CMC’s ability to respond rapidly to a QPS request for assistance in a counter-terrorism investigation.

In November 2006, a confidential report was received by the QPS from a member of the public who suspected that a male person and his associates who were acting suspiciously on the Gold Coast might be engaged in terrorist activities. The person of interest in this investigation had entered Australia via Sydney under a United Kingdom passport on a three-month tourist visa. Inquiries conducted with Interpol indicated he was criminally recorded in the United Kingdom.

On a Sunday in November, following an urgent request for assistance from the QPS, the Assistant Commissioner, Crime determined to commence the investigation under the umbrella referral. On the same day we applied to the Supreme Court for approval to issue an immediate attendance notice to a female associate of the person of interest. The approval was granted, and an immediate notice was issued and served on the witness, who was called before a CMC hearing later that day. Another associate was called to a hearing later in the same week.

The hearings were highly useful in providing a forum in which the associates could be questioned (despite claims of self-incrimination) as to their recent suspicious activities.

In the event, no cogent evidence of terrorist-related planning emerged, and it appeared that the person of interest's suspicious activities related to his alleged involvement in international credit card fraud.

Several days after the CMC hearings, the person of interest was sentenced in the Southport Magistrates Court in respect of a tainted property charge and immediately deported to the United Kingdom.

LAW ENFORCEMENT PARTNERSHIPS

The creation and maintenance of partnerships with other law enforcement bodies has been recognised as an area of key concern to the CMC and is an area of focus in our strategic plan for 2008–12. It is through partnerships that the CMC's activities are undertaken, since the CMC is not resourced to mount major crime operations on its own.

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

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

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

The CMC participates in the following state and national forums:

- ▶ **National Criminal Intelligence and Operations Forum** — works towards developing a 'picture of criminality' in Australia. The forum provides enhanced consultation on issues affecting specific agencies/jurisdictions of interest to others and prioritises operations and intelligence work for national coordination.

- ▶ **Queensland Joint Intelligence and Operations Group** — facilitates the sharing of intelligence and investigative resources between law enforcement agencies within Queensland.
- ▶ **Law Enforcement Advisory Committee** — ensures that law enforcement and national security issues are not compromised in the regulation of the telecommunication industry by the Australian Communications and Media Authority (ACMA).
- ▶ **Operational Management Board (QPS)** — determines priorities for operational resources with State Crime Operations Command (SCOC), considers approval of joint operational undertakings by the QPS and CMC into major and organised crime and criminal paedophilia.
- ▶ **QPS – CMC Joint Executive Team** — facilitates and oversees an effective partnership approach between SCOC and the Office of the Assistant Commissioner, Crime, to major crime issues.
- ▶ **Golf Agitate** — facilitates an effective partnership between the QPS and CMC to criminal paedophilia investigations.
- ▶ **Human Source Working Group** — brings together key persons within Australasian law enforcement with a background in human source management. The group has developed a set of principles that provide a measure by which agencies can review, enhance or develop policy and practice towards creating an extended human source intelligence network; one that ultimately will be capable of operating across the region.
- ▶ **Joint Agency Meeting on Proceeds of Crime** – brings together all Commonwealth and State agencies involved in proceeds of crime recovery. Facilitates sharing of experiences in proceeds of crime recovery and developments in both jurisdictions.
- ▶ **Serious White Collar Crime Liaison Group** – facilitates the sharing of intelligence between State and Commonwealth agencies involved in white collar crime investigations.
- ▶ **Proceeds of Crime Liaison Group** – brings together state agencies involved in the administration of the confiscation scheme under the Criminal Proceeds Confiscation Act 2002 and oversees the partnership arrangement between CMC, QPS and DPP on proceeds of crime recovery.
- ▶ **Queensland Joint Management Group** – facilitates information sharing and operational cooperation between senior executives of the CMC, QPS and national enforcement agencies including the Australian Crime Commission, the Australian Federal Police, the Australian Customs Service and the Australian Taxation Office.

The CMC's closest partner is the QPS, with which it conducts operations under joint multidisciplinary taskforce arrangements, sharing operational resources and using the CMC's coercive powers to dismantle and/or disrupt the criminal activities of organised crime groups and those engaged in sexually offending against children. This partnership extends to the use of the CMC's coercive hearing powers to help the QPS solve serious, unsolved, 'cold case' offences such as murder, arson and extortion. The relationship between CMC and QPS is also critical to the success of the civil confiscation scheme administered by the CMC under the *Criminal Proceeds Confiscation Act 2002*.

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

INVESTIGATIVE HEARINGS

A notable feature of the major crime work undertaken during the reporting period has been the sustained increase in demand by the QPS for the use of Crime's hearings power to progress QPS investigations, particularly during 2007/8. On the basis of the hearings demand for the first quarter of 2008/9 and other relevant indicators, it is considered that this trend is likely to continue well into the future. These investigations have spanned the range of organised crime, serious crime and criminal paedophilia. The challenge has accordingly been to find ways to increase the hearings capacity so as to meet the increased hearings demand in a timely manner. This has been recognised in the CMC's 2008-2012 Strategic Plan, which includes as a priority and challenge the raising of our capacity to investigate major crime by the use of hearings.

To date this challenge has been met in part by internal resource reallocation which allowed the appointment until 30 June 2009 of an additional Senior Legal Officer and an Assistant Support Officer to the Hearings Coordinator, Crime. In addition, the Executive Legal Officer now performs the role of Presiding Officer in many hearings. As a result, simultaneous hearings before two Presiding Officers may be conducted where that is necessary because of the volume of work or for tactical reasons. The increasing demand for use of our hearings services is placing the CMC's budget under additional pressure to meet the associated costs, including costs of witnesses, travel and transcription services. In the longer term it will be necessary to seek further resource enhancement to ensure that the Commission is able to meet the needs of the QPS as its key stakeholder in this vital area of law enforcement activity.

Figure 1 and Figure 2 document our performance in relation to investigative hearings days and witnesses attending hearings. The data provided enable our performance to be reviewed in the context of our estimates for the current financial year and our performance over the previous five years.

Figure 1 Investigative Hearing Days

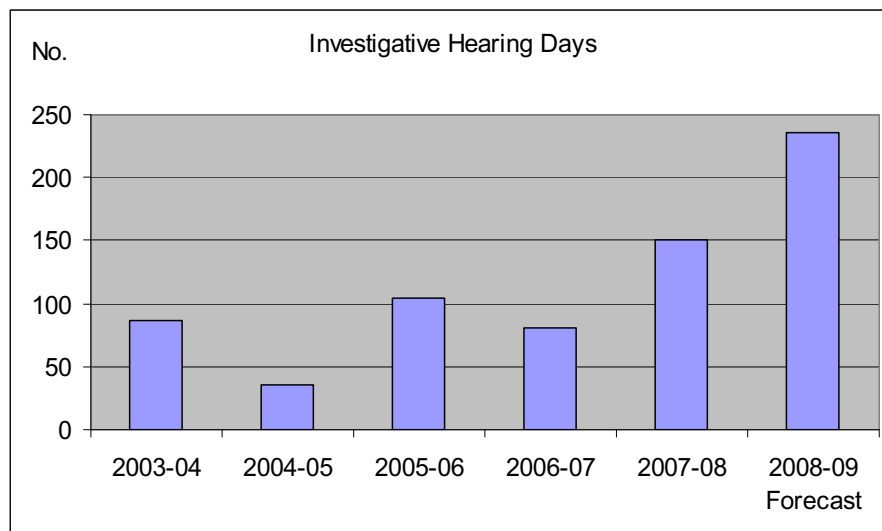
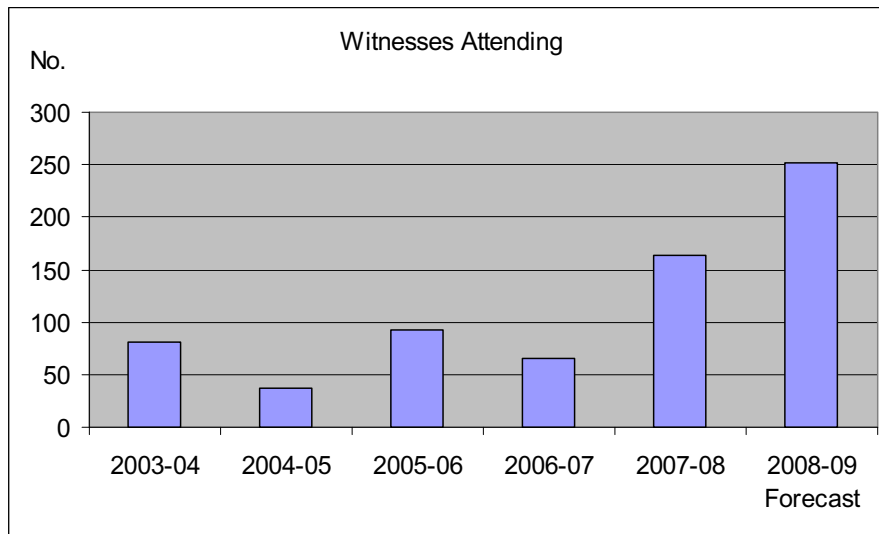


Figure 2 Witnesses Attending Hearings



The CMC seeks the Committee's support for additional funding to enable the CMC to continue to meet the increasing demand for the use of its investigative hearings power.

STRATEGIC INTELLIGENCE

The CMC's Strategic Intelligence Unit monitors organised crime markets and groups in Queensland, proactively identifies crime or misconduct targets for investigation by the CMC's multidisciplinary investigative teams or other law enforcement agencies, and manages the CMC's human source program.

It also liaises extensively with partner law enforcement agencies in Queensland and other Australian states and territories, such as the QPS, ACC and AFP, to share intelligence and target criminal and corrupt networks through multi-jurisdictional partnerships.

An important aspect of the Strategic Intelligence Unit's work is the production of strategic intelligence assessments. These assessments interpret trends and predict changes in the criminal environment and assess the risks posed by particular criminal activities and networks. In doing so, they help the CMC, other law enforcement agencies and policy makers to make decisions about strategic and operational priorities and resourcing, and to develop legislative, policy and operational responses to current and emerging threats in the criminal environment.

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

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

In addition to the bulletins and digests, we produce more substantial strategic intelligence assessments on specific issues where there is potential for the issue to affect law enforcement in Queensland. We also work closely with partner law enforcement and misconduct agencies in Queensland and other Australian states and territories to support their strategic intelligence assessments. For example, each year we provide information about criminal networks and activities in Queensland for the ACC's principal strategic product, the *Picture of Criminality in Australia*, and its annual national criminal threat assessment.

Since April 2006, three significant strategic assessments, one crime bulletin and one intelligence digest have been produced. We also provided detailed submissions to support two inquiries conducted by the Commonwealth's Joint Parliamentary Committee into the Australian Crime Commission.

In May 2008 we commenced work on a strategic assessment of organised crime markets in Queensland. We have previously produced two similar organised crime markets assessments, the first in 1999 and another in 2004. The organised crime markets assessment uses a market-based approach to analyse the nature and extent of organised criminal activity in Queensland and assess the relative risk posed by particular illicit markets. The assessment will inform stakeholders about national and state trends and significant issues; as well as drivers of specific markets and participants in those markets. The assessment is being managed as a series of projects, primarily based on significant illicit markets:

- ▶ organised property crime
- ▶ fraud and money laundering
- ▶ illicit drug markets
- ▶ trends and issues in organised crime

A classified law enforcement report and a unclassified crime bulletin will be published for each of the four projects. The reports will be published over several months commencing in early 2009.

TACTICAL INTELLIGENCE

Intelligence analysis is an integral part of our multidisciplinary approach to tactical investigation teams and operational areas. In addition to progressing target development initiatives in the Strategic Intelligence Unit, intelligence analysis is also instrumental in progressing tactical and operational matters in Misconduct, Crime, Cerberus and Witness Protection. We are responsible for ensuring the collation of intelligence to our intelligence database and the dissemination of useful intelligence to other agencies. A total of 668 intelligence reports have been collated to the CMC's Intelligence Recording and Analysis System (IRAS) since April 2006. Of these, 385 were disseminated by electronic transfer to the Australian Criminal Intelligence Database (ACID) for sharing with other law enforcement agency personnel who use ACID.

During the period 1 April 2006 to 30 September 2008, 161 disseminations have been made to partner agencies under section 55(2) of the CM Act. Of these, 91 were on the CMC's initiative, and the remainder in response to specific requests. These disseminations covered issues such as organised crime and drug networks, paedophile matters, amphetamine syndicates, outlaw motorcycle gangs, and money laundering. On a number of occasions, successful enforcement action has resulted from the intelligence that we have disseminated.

INTELLIGENCE PUBLICATIONS

STRATEGIC ASSESSMENTS

During the review period SIU produced classified strategic assessments of groups suspected of involvement with organised crime, and of the level of threat they pose to the Queensland community. These reports are developed for law enforcement agencies.

CRIME BULLETINS

The cocaine market in Queensland (September 2007)

A crime bulletin on the cocaine market in Queensland was released to the public in September 2007.

OTHER REPORTS

Submission to Parliamentary Committee on the Australian Crime Commission – Inquiry into legislative arrangements to outlaw serious and organised crime groups (May 2008)

In 2008 the Commonwealth Parliamentary Committee on the Australian Crime Commission commenced an inquiry into the effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups. We provided a detailed submission to the Committee. The Committee has not yet held public hearings.

Submission to Parliamentary Joint Committee on the Australian Crime Commission – Inquiry into the future impact of serious and organised crime on Australian society (March 2007)

In 2007 the Commonwealth Parliamentary Joint Committee on the Australian Crime Commission undertook an inquiry into the future impact of serious and organised crime on Australian society. We provided a detailed submission for the committee. The Director, Intelligence and the Manager, Intelligence also presented evidence to the Committee's hearing. The Committee published its report in September 2007.

TARGET DEVELOPMENT

The SIU develops targets that warrant full investigation under one of the major-crime references. The unit provides a centralised, vital bridge between the crime and misconduct areas. This enables the unit to identify any overlap in investigations that can occur when crime investigations uncover corruption or when misconduct investigations uncover organised crime.

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

Since April 2006, the SIU has undertaken a series of target development projects. Of these, three matters were referred to the Crime Intelligence Research Review Committee (CIRRC) as suitable targets for further investigation. One matter progressed to CMC tactical operations and two remain as current CMC operational probes. In addition to these three matters, the SIU was also involved in a joint investigation with the ACC. Another matter progressed by the SIU as a probe was disseminated to the Australian Tax Office (ATO) for further action. The SIU also provided intelligence support to Crime for another matter that was already at operational phase.

The SIU has also undertaken two current initiatives to enable the proactive targeting of child sex offenders. Its working relationship with QPS Child Protection Investigation Units (CPIUs) will encourage the flow of information regarding networked child sex offending with a view to identifying possible target development opportunities. Furthermore, through on-going liaison with intelligence units within Department of Corrective Services, the SIU is involved in identifying incarcerated child sex offenders deemed likely to re-offend upon their release. These individuals will be subject to future target development initiatives.

HUMAN SOURCE PROGRAM

An important investigatory and intelligence tool, particularly in the organised-crime area, is the use of individuals who are in a position to provide confidential information. Human Sources have the potential to provide timely and accurate information that is not available from other sources. Identifying, recruiting and handling such sources is not, however, without considerable difficulties and risk to both the individuals and the officers involved.

In recognition of the importance of using such sources and the risks involved, the CMC adheres to a comprehensive policy and related procedures covering this strategy. These policy and procedures are currently being reviewed. The examination will consider whether the CMC policies, formalised in 2003, meet current best practice. It is expected that minor changes to procedures, policy and forms will be recommended.

The CMC provides specialised training for its officers. The 'Human Source Operations Course' is conducted jointly by the CMC and the ACC. Participants of the course have included officers from the CMC, ACC and QPS. A total of 7 courses have been successfully presented since April 2006. The course provides a practical guide to human source operations and satisfies an important and increasingly recognised requirement for law enforcement officers to be trained to handle human sources for strategic and tactical operations. Feedback from participants and instructors remains extremely favourable. The course is considered to be a bench mark in dedicated human source training in law enforcement and has attracted the interest of a number of police services from other jurisdictions. In March 2008, the CMC also assisted the Office of Police Integrity, Victoria with the delivery of a Human Source Operations Course.

The CMC is of the view that it should continue to be active in this area and encourage the attainment of best practice standards not only among its own officers but also in other law enforcement agencies around the world. In 2004 the CMC participated in the first Australasian Human Source Working Group (AHSWG). The AHSWG was designed to bring together key persons within Australasian law enforcement with a background in human source management to develop a set of key principles that could be endorsed by the then Australasian Crime Commissioner's Forum (ACCF) and adopted throughout Australasia. In addition to the development of key human source management principles, the AHSWG has also endorsed a risk assessment framework for human source activities and developed specialised training competencies. The CMC has been involved all four meetings of the AHSWG since inception.

Since April 2006 the CMC has managed 24 confidential human sources, and of these 9 are currently registered. Information from these sources provided the basis for a significant portion of the 668 information reports uploaded to the CMC intelligence database (IRAS) during the relevant period.

CRIME RESEARCH AND PREVENTION

The Research and Prevention unit of the CMC undertakes a range of research projects aimed at informing and supporting the CMC's organised crime and criminal paedophilia investigations. Since 2006, all crime research projects undertaken by the CMC must be approved by the Crime Intelligence and Research Review Committee (CIRRC), to ensure that each individual project has the capacity to make a practical contribution to the CMC's fight against major crime.

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

Drugs research

Natural History of Young Amphetamine Users

The Natural History of Young Amphetamine Users project is a collaborative study with the Crime and Misconduct Commission, Queensland Health and Queensland Alcohol and Drug Research and Education Centre (QADREC), University of Queensland.

This project is the first study to collect data from an Australian general population sample of young amphetamine users, rather than from people attending treatment centres, prisons or watch houses. The concept of a 'natural history' allows the research team to monitor and observe the patterns of use within 18–22 year olds when left to their own devices (i.e. without law enforcement or health intervention).

This project has been designed to contribute to better drug policies and measures aimed at improving the health of young drug users and reducing the incidence of drug-related harms (e.g. overdose, acute toxicity and drug dependence). This study will examine the motivations for beginning amphetamine use as well as the factors that influence reductions in, or ending of use. One of the major benefits of the longitudinal nature of the study will be the ability to assess the impact of significant life events on a person's decisions regarding their drug use.

Post release recidivism - drug offending

This project is an extension of the adult male drug use careers of offenders (DUCO) study, conducted by the Australian Institute of Criminology (AIC) in 2001. It involves a post-release recidivism study examining factors contributing to both rearrest and reimprisonment of the original offender sample. The research is part of a collaborative project with the AIC.

The post-release recidivism project will provide an evidence base regarding the nature and dynamics of crime-related drug use, including the relationship between crime, substance abuse and related life experiences of offenders, that may be used to inform criminal justice policy and support the CMC's strategic goal of combating criminal paedophilia.

When the project is completed, it has the potential to deliver a unique recidivism study comparing both post-DUCO rearrest and reimprisonment.

The project will be completed at the end of 2009.

Prevalence of Alcohol and Drug Use in Emergency Departments II (PADIE II)

The *Prevalence of Alcohol and Drug Use in Emergency Departments II (PADIE II)* study re-examines the nature and extent of alcohol and drug use among patients attending the Gold Coast Hospital Emergency Department. A public report was published in August 2008. This was a collaborative project undertaken by the CMC's Research and Prevention Unit in conjunction with the Australian Centre for Prehospital Research (ACPHR) and the Queensland Alcohol and Drug Research and Education Centre (QADREC) of the University of Queensland. It replicates and extends the first PADIE project (PADIE I), conducted in 2002 and published in 2004 (Exploring drug use: Prevalence and patterns among emergency department patients).

Drugs and crime: Trends among watch-house detainees

In March 2008 we released our report entitled *Drugs and crime: Trends among watch-house detainees*. It examined the drug use patterns and criminal behaviour of detainees from various watch-houses in Queensland, New South Wales, Western Australia and South Australia through the Drug Use Monitoring in Australia (DUMA) data collected by the Australian Institute of Criminology, state police services and local researchers. This report is the first of its kind to make direct state comparisons on illicit drugs use in watch-houses and to monitor drug usage in watch-houses in Queensland over time. The report is of particular benefit to those who work with offenders in watch-houses and prisons, and even to those who work with – and monitor the impact of – illicit drug use in the general population. Significant insight is provided into a variety of complex relationships between illicit drug use, offending behaviour, demographic factors, market factors, and various geographic and time-sensitive issues.

Profiling the Queensland amphetamine market

Our report *Profiling the Queensland amphetamine market* provides a profile of amphetamine demand and supply and will be a useful point of reference for future projects (internally, such as the Natural History of Young Amphetamine Users project and externally) that aim to measure the impact of recently implemented initiatives on the amphetamine market. These initiatives include legislative amendments, increased regulation of precursor chemicals and modifications to the way in which compounds containing pseudoephedrine are sold.

Illicit drug use in Queensland: a survey of households 2002-05

Illicit drug use in Queensland: a survey of households 2002-05 is based on quantitative data obtained from a subsection of the household survey undertaken by the Office of Economic and Statistical Research (OESR) – the Queensland Household Illicit Drug Use Survey (QHIDUS). This report is important as it contributes to the development and implementation of local health and law enforcement strategies for illicit drug use across Queensland.

Paedophilia research

Child sexual offending: A review of the recent national and international literature, legislative change and policy developments (Axis II)

Project Axis II is a follow-up to the original Project Axis (2000), a wide-ranging enquiry by the QCC and QPS into the sexual abuse of children in Queensland. Axis II will review changes in research, policy and legislative developments in child sex offending since 2000. It will ensure that the CMC is well informed regarding the latest research findings and policy outcomes from both Australia and overseas. It will also allow the CMC to identify any gaps in research or policy that need to be addressed to improve the police and criminal justice response to child sexual offenders, offences and victims.

The Axis II project will include the following volumes and activities:

- The prevalence and incidence of child sexual offences
- Victim characteristics and the impact of these characteristics on the disclosure of child sexual abuse
- Offender characteristics and the impact of these characteristics on the disclosure of child sexual abuse
- The behaviour of child sexual offenders (targeting and grooming of victims, internet offending, and associations among child sexual offenders) and the impact of offence dynamics on the disclosure of child sexual abuse
- Criminal Justice response to child sexual offenders I: Detecting, reporting, and investigating sexual offenders
- Criminal Justice response to child sexual offenders II: Prosecuting and sentencing sexual offenders

- Criminal Justice response to child sexual offenders III: Assessing sexual offenders
- Criminal Justice response to child sexual offenders IV: Treating sexual offenders
- Criminal Justice response to child sexual offenders V: Monitoring sexual offenders (including preventative detention and extended supervision orders)
- The community response to child sexual offending: Community-based prevention programs, services for victims of sexual abuse, programs and legislation aimed at facilitating and supporting disclosure of child sexual abuse, community perceptions of child sexual abuse and the impact of the media on programs, policies and legislation

To date, we have collected and analysed the research, legislation and policy data that will inform the following volumes.

The prevalence and incidence of child sexual offences

This volume will examine and attempt to compare the prevalence and incidence of child sexual offences in Queensland, across Australia and internationally. Our review indicated that there were problems with the accuracy of data and a need to improve methods of reporting so as to provide baseline information on the problem.

Victim characteristics and the impact of these characteristics on the disclosure of child sexual abuse

This volume will consider the characteristics of victims of child sexual abuse and the way these characteristics, together with the nature and impact of the offence, interact to influence the likelihood of disclosure. The research that does exist suggests that current child sexual abuse prevention programs that target ‘unwilling’ or ‘naïve’ sexual offence victims will not meet the needs of victims who perceive themselves as ‘willing’ partners in the abuse.

Offender characteristics and the impact of these characteristics on the disclosure of child sexual abuse

In this volume we will review research on the behaviour and characteristics of adult male sex offenders, juvenile/adolescent male sex offenders, Indigenous offenders and female (adult and juvenile) sex offenders and factors that are associated with their offending. It will also identify offence-based details (e.g. the time at which the offence was committed) that may provide indicators of the profile of the offenders involved in the offence (e.g. juvenile, opportunist). Matching offender details with offence based details is also of use when developing situational prevention programs aimed at reducing opportunities for child sexual offending to occur.

The behaviour of child sexual offenders and the impact of offence dynamics on the disclosure of child sexual abuse

This volume will review research regarding the behaviour of child sexual offenders. In this volume, we will discuss different ways that offenders target, access and offend against victims, including on and offline grooming and indirect offences occurring by way of the Internet. As part of our discussion of internet-related offence behaviour, we will also discuss the relationship between on and offline offences, including the relationship between offences involving media portraying child sexual abuse and contact offences with children. This discussion has implications for the way in which the courts and other criminal justice agencies respond to internet-based offenders.

Criminal Justice response to child sexual offenders I: Detecting, reporting, and investigating child sexual offenders

This volume will provide details of the roles and responsibilities of individuals and agencies involved in detecting, reporting, and investigating child sexual offenders. It will also provide details of new developments in the area of child sexual offence investigation.

Criminal Justice response to child sexual offenders III: Risk assessment of sexual offenders

This volume will consider the utility of a range of risk assessment instruments and methods for predicting the likelihood of offender recidivism, targeting appropriate treatment strategies to prevent recidivist behaviour, and making decisions regarding offender sentences, parole and post detention supervision.

We found that most criminal justice systems use only a limited number of risk assessment instruments and tend to use the same instruments across a variety of populations, settings and purposes. All of the commonly used risk assessment instruments identified in our review were developed overseas and validated on non-Australian populations. This is of particular concern when considering their applicability to subgroups of Australian sexual offenders.

Criminal Justice response to child sexual offenders IV: Treating sexual offenders

This volume will review current approaches to sex offender treatment programs that aim to reduce offence recidivism. Our review shows that, although cognitive-behavioural treatment (CBT) programs that incorporate a relapse prevention framework appear to be the most effective in reducing the risk of recidivism, treatment effectiveness may be significantly influenced by where and when they are delivered, how they are delivered, and who delivers them.

We also reviewed literature regarding ‘responsivity factors’, or factors that may undermine offenders’ ability to be successful in treatment. Notably, our review shows that child sexual offenders who drop out of treatment have higher recidivism rates than those who complete treatment or do not undertake any treatment.

Criminal Justice response to child sexual offenders V: Monitoring sexual offenders (including preventative detention and extended supervision orders)

In recent years there has been legislation in Queensland that provides for the control of convicted sexual offenders after the expiration of their court ordered sentence. The legislation also provides for distinctions in the care, treatment and control of sexual offenders. There has also been an increase in the sophistication of the monitoring and management of sexual offenders both in custody and in the community. This volume offers an overview of Queensland legislation that provides for the control of convicted child sexual offenders after the expiration of their court ordered sentence. It also reviews research and evaluations of similar overseas legislation and discusses associated issues.

The stated objectives of the current body of legislation in Queensland are to protect the public (and in particular children) from sexual offenders, provide a level of treatment to the offender and also maintain some level of control over serious sexual offenders. Research from other jurisdictions suggests that similar legislation has not been effective in achieving these goals.

Evaluation of Child Responsive Communities

The 'Child Responsive Communities' (CRC) project is a child sexual abuse prevention program aimed at Indigenous youth. Its aim is enhancing community capacity to respond to allegations of sexual abuse (e.g. through law enforcement, health and welfare, etc.). It is a joint undertaking between the CMC, the Department of Communities and the Child Safety Directors Network.

After extensive consultation with community and government representatives, the Indigenous community of Cherbourg was identified as a suitable site for piloting the project, as it met the two main pre-requisites of a suitable pilot site:

- ▶ community acknowledgement that child sexual abuse was an issue of concern to community members
- ▶ access to government and non-government services to respond to disclosures of child sexual abuse and undertake programs aimed at preventing child sexual abuse.

In March 2008, representatives from the CMC Research and Prevention Unit were invited to Cherbourg to attend a meeting of the local CRC project reference group. This group comprises representatives from the Queensland Police Service, Education Queensland, Queensland Health, Queensland Department of Communities, Queensland Department of Corrective Services, Queensland Magistrates Courts (Queensland Department of Justice and Attorney-General), Queensland Department of Child Safety, and TAFE. The reference group have worked hard to finalise the project plan. A central part of this plan is the delivery of school and community based educational programs. The reference group are keen for the CMC to begin collecting baseline data for the evaluation so that they might begin delivery of these programs in early 2009. We are currently in the process of planning for the evaluation of the pilot Child Responsive Communities Project.

Organised child sexual offending

The CMC is currently preparing to undertake research into organised child sexual abuse and networked child sexual offenders. Our review of research concerning child sexual offences (Axis II) has revealed a dearth of recent research in this area. This is largely due to difficulties accessing relevant data. Our project will be undertaken in collaboration with the QPS Taskforce Argos and CMC Taskforce Cerberus, and will make use of data collected by Taskforce Argos during a recent international investigation into an organised child sex offender network.

International forum on child sexual exploitation

In August 2008, the CMC was invited to present at the ‘Thematic Meeting on Child Abuse Images and Sexual Exploitation of Children Online’ in Bangkok, Thailand. This meeting was convened by UNICEF and ECPAT International to set an agenda for discussion during the World Congress against Sexual Exploitation of Children, to be held in Rio de Janeiro later in 2008. Specifically, the meeting aimed to share analysis on current research and work addressing child abuse images and sexual exploitation of children.

The CMC representative presented the findings of her research on the social dimension of the online trade of child abuse images and the content of child abuse images, and facilitated a workshop aimed at identifying issues related to the detection and management of online offenders and the prevention of online offence behaviour (and associated offline offence behaviour).

Participation in the thematic meeting was an opportunity to promote the work currently being undertaken by the CMC in relation to combating criminal paedophilia.

Other research projects 2006–08

Project OPAL (Offending Persons Across the Lifecourse)

This research project was developed in response to identified knowledge gaps regarding the specific criminogenic risks and needs of offenders serving non-custodial sentences in Queensland. The methodology involved interviews with 480 offenders serving community supervision orders in Queensland. Interviewers documented the life experiences of these offenders, including their experiences of childhood, adolescent and adult trauma, offending patterns, illicit drug use, mental health problems etc. The results of this research have significant implications for the development of effective correctional rehabilitation programs aimed at reducing offender recidivism. Results also have implications for legislative law reform relating to the physical abuse of children as data indicates an association between childhood physical abuse and offending.

The results of the project OPAL research were published by the CMC in a public report and a CMC research and issues paper:

Breaking the Cycle: a study of victimisation and violence in the lives of non-custodial offenders identified the potential for correctional institutions to implement relevant treatment opportunities for offenders. It also identified the need for early intervention for ‘at risk’ families by community based organisations and government departments to break the cycle of victimisation and reduce the likelihood of criminal recidivism.

Childhood physical abuse and adult offending: Are they linked, and is there scope for early intervention? (CMC, 2007) is a research and issues paper that examined the relationship between physical abuse during childhood and offending (both official and self-reported) among the participants of the OPAL project. We found that physically abused offenders reported higher rates of violent, property and total offending and that parental support can minimise the negative consequences of physical abuse.

Mandatory treatment and perceptions of treatment effectiveness: A Queensland study of non-custodial offenders with drug and/or alcohol abuse problems (October 2008). documents research examining the impact of drug treatment on offenders who engage in the treatment voluntarily versus those who are diverted to treatment through a court order. The research includes a review of the most recent national and international literature regarding mandatory and voluntary drug treatment and a secondary analysis of data drawn from Project OPAL. The results of this research revealed that respondents with severe drug abuse problems are more likely than those with less severe drug abuse problems to recognise that they have drug abuse problems, but they are not more likely to seek treatment voluntarily or perform better in treatment. We also found that mandatory treatment is perceived by participants to be as effective as voluntary treatment.

Project OPAL has also resulted in the publication of a number of book chapters and journal articles:

- ▶ Paul Mazerolle, Margot Legosz, Elena Miceski, Jennifer Sanderson. 2007. Repeat sexual victimisation among an offender sample: Implications for pathways and prevention. In *Pathways and Crime prevention: Theory policy and practice*. Editors: Alan Rance and Ross Homel. Published by Willan Publishing.
- ▶ Sharon Dawe, Sally Frye, David Best, Derran Moss, Judy Atkinson, Chris Evans, Mark Lynch, Paul Harnett. 2007. *Drug use in the family: impacts and implications for children*. A report prepared for the Australian National Council on Drugs.
- ▶ Rosie Teague, Paul Mazerolle, Margot Legosz, Jennifer Sanderson. 2008. Linking childhood exposure to physical abuse and adult offending: examining mediating factors and gendered relationships. *Justice Quarterly*, 25(2), 313-348.

In addition, between 2004 and 2008, findings from the project OPAL research were presented at a number of local, national and international conferences, including:

- ▶ the Australian Winter School
- ▶ Australia and New Zealand Society of Criminology conferences in both Australia and New Zealand
- ▶ the American Society of Criminology conference
- ▶ the International Congress on Child Abuse and Neglect.

CHALLENGES FOR THE FUTURE

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

The emergence of e-crime and identity crime requires that law enforcement agencies like the CMC, both alone and in strategic partnerships, maintain a level of technical sophistication which at least matches that of offenders. Particularly in the area of internet offending by paedophiles, the willingness of offenders to adopt new technology and use newly developed encryption devices presents a constant challenge. The CMC has responded by continual training of its staff and enhancement of its technical capabilities, together with its pursuit of telecommunications interception powers.

The adoption of new and efficient technology is crucial to the CMC's commitment to preparing high-quality electronic court briefs in all its investigations to facilitate the presentation of complex cases to defendants and their lawyers and, ultimately, the courts. The benefits of the e-brief beyond its primary law enforcement function has been explained to various stakeholders in presentations at the 2008 Law and Order Symposium and the 2008 Annual Queensland Magistrates Conference, as well as in demonstrations to other law enforcement agencies. A quite early version of the e-brief was utilised in presenting the prosecution case in a complex contested drug trafficking sentence in March 2008. The judge in that matter particularly acknowledged the enormous assistance that the court derived from having evidence in complex and protracted investigations presented in this manner, resulting in substantial savings of court time.

OUTLOOK 2008–09

In 2008–09 we will:

- ▶ Devote increased resources to providing an efficient, increased and timely hearing service to meet partner-agency demand.
- ▶ Continue to focus on 'niche' areas of child-sex offending without duplicating the work of other agencies. This includes working with agencies to explore innovative ways of combating paedophilia.
- ▶ Continue to play a lead role in the civil confiscation scheme;
- ▶ Complete a strategic assessment of organised crime markets in Queensland. The resulting trends and issues paper will assist the CMC, law enforcement agencies and others in their responses to counter the threat of organised crime.
- ▶ Continue our involvement with the CRC working group;
- ▶ Begin an evaluation of the intervention proposed by the CRC working group in an Indigenous community;
- ▶ Recruit participants into the Natural History of Young Amphetamines joint project and begin data collection;
- ▶ Continue our review of the latest information about child sexual offence issues. We expect to publish a series of brief Research and Issues papers during 2008–09.
- ▶ Continue our analysis of drug offending recidivism rates with the Australian Institute of Criminology and begin a study of sex offending recidivism among the same sample of offenders.

Chapter 4: Proceeds of Crime

This chapter:

- ▶ gives an explanation of the Proceeds of Crime function;
- ▶ examines the achievements of the scheme;
- ▶ discusses trends;
- ▶ compares our performance against benchmarks; and
- ▶ discusses emerging issues that effect the scheme.

OVERVIEW

The CMC is responsible for the administration of the civil confiscation scheme under the *Criminal Proceeds Confiscation Act 2002* (the Act)²⁹. The legislation commenced on 1 January 2003 and contains two separate schemes for the recovery of the proceeds of crime. The second scheme is conviction based and is administered by the DPP³⁰.

The civil confiscation scheme is not dependent upon a person's conviction on criminal charges before confiscation can be effected, nor does it require the State to link the property sought to be forfeited to the criminal offence, however, the State is required to prove, to the civil standard, that the respondent engaged in 'serious crime related activity'³¹.

Property which may be subject to forfeiture under the civil confiscation scheme is limited to property derived from illegal activity³². Property used in the commission of an offence is not liable to forfeiture under the civil confiscation scheme.

Whilst the CMC is charged with the administration of the civil confiscation scheme, the effective operation of the scheme is reliant upon a high level of co-operation between a range of law enforcement, prosecutorial and property administration agencies.

Under the civil confiscation scheme the key agencies are:

- ▶ QPS (and to a lesser extent other law enforcement agencies such as the ACC, AFP and the CMC itself) whose primary role is the initial identification of matters and provision of police investigative resources;
- ▶ the CMC who prepares matters for restraint, provides the financial investigative resources and conducts the investigations necessary to deal with interlocutory matters and in preparation for final relief;
- ▶ the DPP who make the applications to court and act as solicitors on the record; and
- ▶ the Public Trustee who may be appointed by the court to take control of restrained property.

²⁹ Section 4(5)

³⁰ Section 4(4)

³¹ See s.16 for the definition of 'serious crime related activity'

³² Section 13

Since the last review both the CMC and the DPP have increased staffing levels to meet the increasing demand for proceeds of crime recovery. The Public Trustee has also applied more resources to the administration of property restrained and forfeited under both confiscation schemes.

ACHIEVEMENTS

As at 30 September 2008, the following results have been achieved since the commencement of the civil confiscation scheme:

Year	Chapter 2 Restraints		Chapter 2 Settlements	
	Number	Value	Number	Value
2002/2003	10	\$7.129M	1	\$0.018M
2003/2004	33	\$10.547M	2	\$0.768M
2004/2005	37	\$8.088M	15	\$1.622M
2005/2006	28	\$10.879M	25	\$1.999M
2006/2007	50	\$11.743M	26	\$4.245M
2007/2008	78	\$18.562M	27	\$4.675M
2008/2009	23	\$10.443M	6	\$0.914M
As of 30/9/08				
TOTALS	259	\$77.394M	102	\$14.244M

As at 30 September 2008, property valued at \$49.78m was restrained under the *Criminal Proceeds Confiscation Act 2002* in relation to 105 matters (compared to \$25.04m in respect of 56 matters at the time of the last review). Twenty one matters involving property valued at approximately \$5.16m were under investigation preparatory to restraint.

Performance against targets is depicted in Figures 3 to 6.

Figure 3

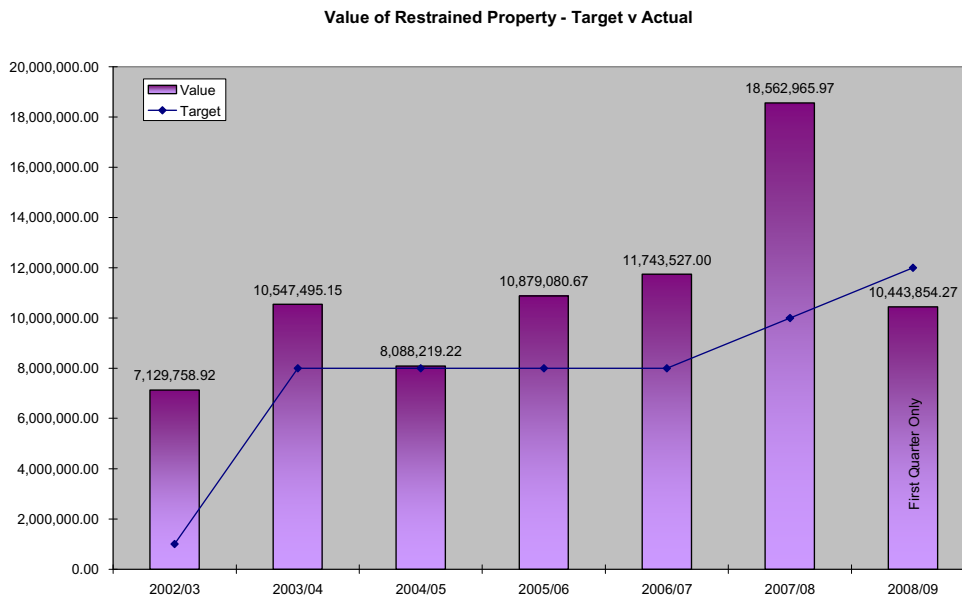


Figure 3 shows the exponential growth in the actual value of property restrained in the 2007/08 financial year, almost double the targeted value of property restrained. Paramount among the reasons for this growth was the steep increase in the number of referrals received from QPS as proceeds of crime recovery becomes better integrated into investigative processes and the increased staffing capacity of the CMC Proceeds of Crime Team. The 2008/09 first quarter results suggest that this exponential growth is continuing in the current financial year with first quarter results approaching the annual results for 2003/04 and 2005/06 and exceeding the annual results for 2002/03 and 2004/05.

Figure 4

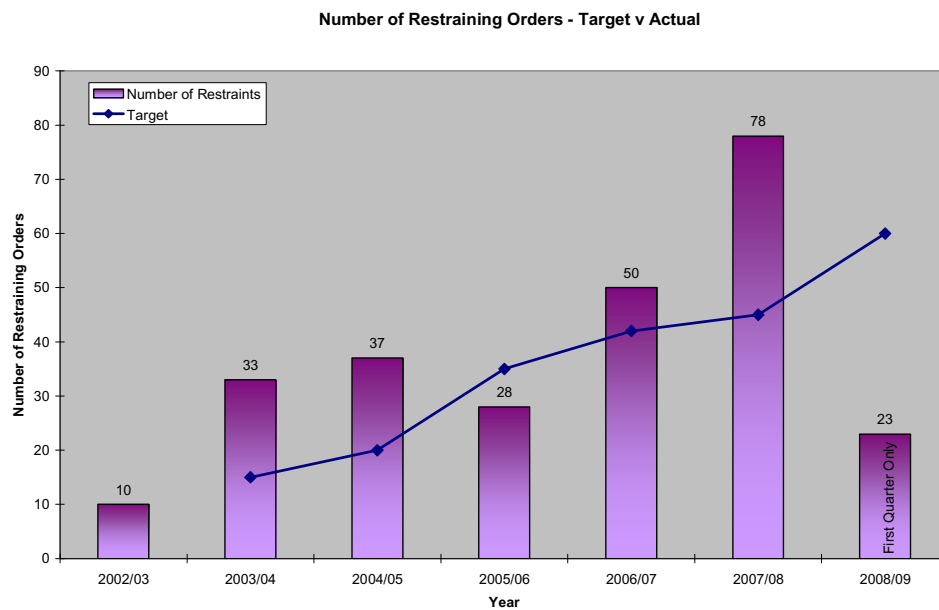
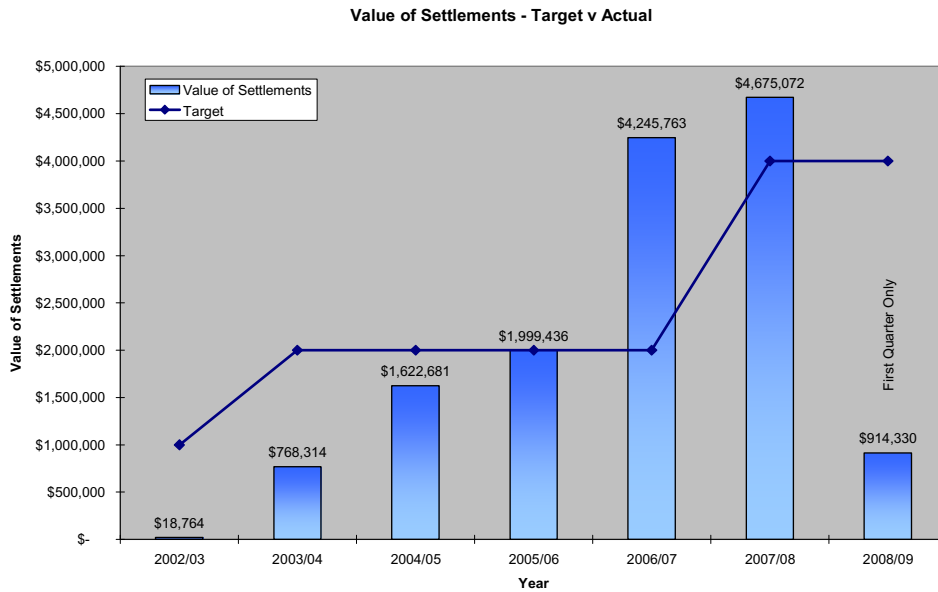


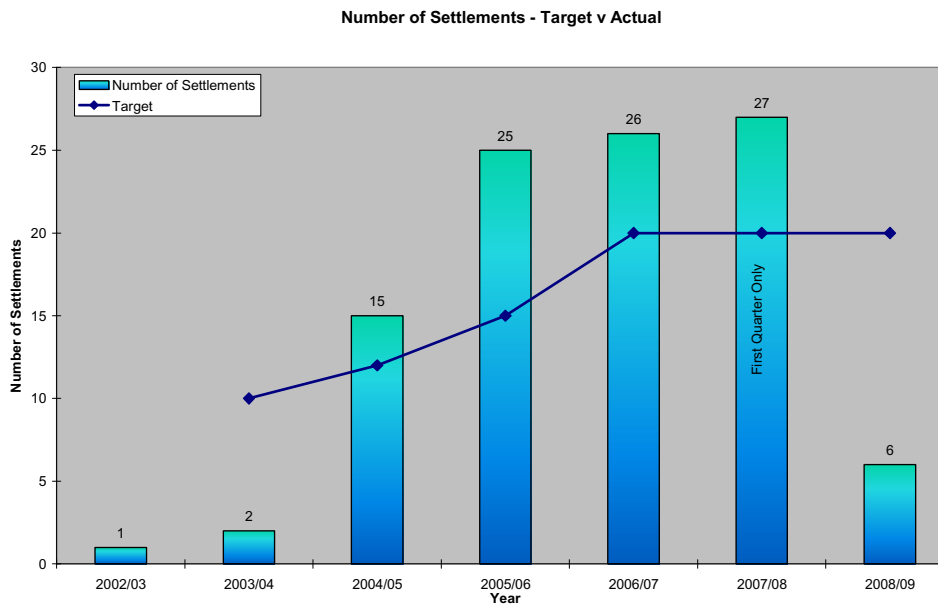
Figure 4 shows the increasing number of restraining orders obtained over time and reflects the same trend evident in Figure 3. The reduction in activity in the 2005/06 financial year was the result of a refocusing of effort in that year towards litigation of existing matters brought about by resource constraints facing the CMC Proceeds of Crime Team at that time. As those resource constraints were alleviated by the recruitment and training of additional staff in 2006 and 2007, both the number and value of new matters dealt with were able to be increased.

Figure 5



The growth in the value of property forfeited to the State is depicted in Figure 5. Similar growth in the number of settlements is depicted in Figure 6.

Figure 6



As the making of a restraining order is the initial step in the process for the recovery of the proceeds of crime, the nature of the litigation process means that settlements will always lag behind restraining orders, in some cases by several years. First quarter results for 2008/09 suggest that the full year results for settlements will be similar to those achieved in 2006/07 and 2007/08.

This plateau effect may be, to some extent, reflective of the plateauing in the value of restraining orders between 2003/4 and 2006/07. Detailed analysis of the individual cases underlying these results suggest that there is a contributory effect with 77% and 82% of matters settled in 2006/07 and 2007/08 respectively relating to restraining orders obtained in preceding periods.

The growth in the value and number of restraining orders in 2007/08 (continuing into 2008/09) is also likely to be a contributing factor, as available resources are diverted from investigative tasks leading to settlement towards the immediate demands of seeking new restraining orders.

As at 30 September 2008, property valued at \$14.244m had been forfeited to the State and restrained property valued at \$49.78m was held under the civil confiscation scheme.

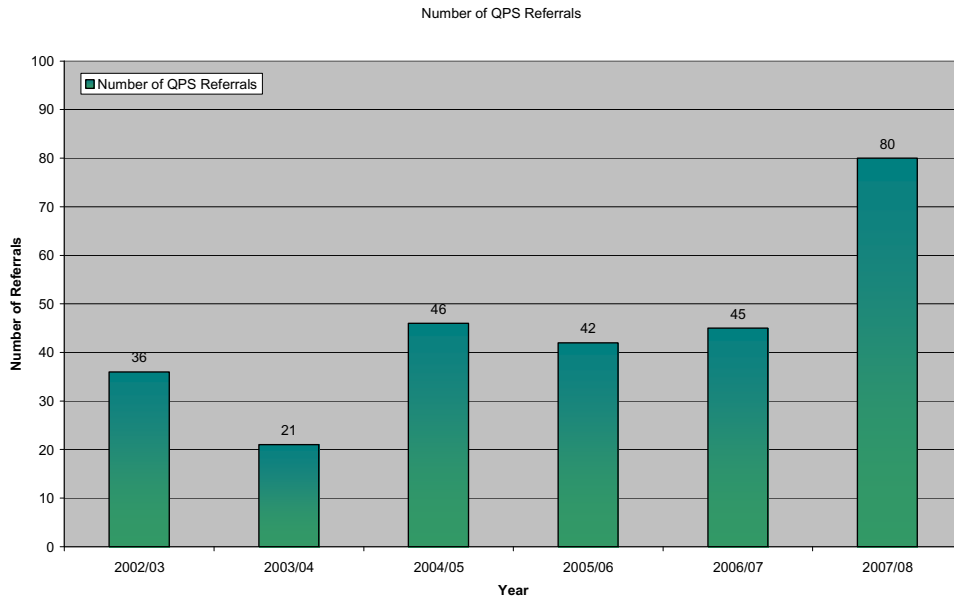
TRENDS

Figures 3–6 show the increasing trends in number and value of restraining orders and number and value of settled matters. First quarter results for 2008/09 suggest that the upward trend in value and number of restraining orders will continue in the immediate future whilst the first quarter results for the value and number of settled matters suggest that this will plateau at a level consistent with 2006/07 and 2007/08.

Taking account of the time lag factor, we anticipate future growth in both the value and number of settlements commensurate with the increase in the value and number of restraining orders in preceding periods.

As the CMC civil confiscation function is dependent upon appropriate matters being referred from other law enforcement agencies, in particular QPS, the future growth of proceeds of crime recovery is dependent upon future growth in referrals. Growth in referrals was anticipated as proceeds of crime recovery became better embedded in the investigative process of mainstream law enforcement agencies. That effect is depicted in Figure 7 which shows the trend in referrals from QPS.

Figure 7



The upward trend due to better integration of proceeds of crime recovery into investigative practice is expected to continue for several years yet. Other factors likely to escalate the number of referrals in future years include an enhanced QPS capability to identify prospective proceeds of crime matters through the new QPrime crime recording system and the potential for expansion of the range of criminal activity subject to proceeds recovery action.

At present more than 90% of proceeds of crime matters dealt with under the civil confiscation scheme relate to underlying drug-related crime. The other major area of criminal activity with significant potential for proceeds of crime recovery is fraud-related crime. At present very little proceeds of crime recovery action is taken with respect to fraud matters due primarily to resource constraints and the potential impact on recovery by the victim through restitution orders.

Under the legislation as it currently stands, proceeds of crime recovered through confiscation action is paid into the consolidated fund. Confiscation action may therefore inhibit the ability of a victim to obtain compensation under an order for restitution.

The emphasis on drug related crime is somewhat at odds with the Commonwealth experience where 73% of offences dealt with under the *Proceeds of Crime Act 2002* are fraud related³³. Note, however, that Commonwealth fraud matters are mostly frauds on the Commonwealth rather than State offences of fraud on private citizens. In monetary terms, the value of fraud related crime is likely to be greater than drug related crime.

³³ Report on the Independent Review of the Operation of the *Proceeds of Crime Act 2002* (Cth) pp19 & 20

EFFECTIVENESS AND EFFICIENCY

The CMC costs of the proceeds of crime function relative to performance are depicted in Figure 8. Note that the chart depicts only the CMC costs of the civil confiscation function and does not reflect the total costs of the confiscation function from a whole-of-government perspective.

Figure 8

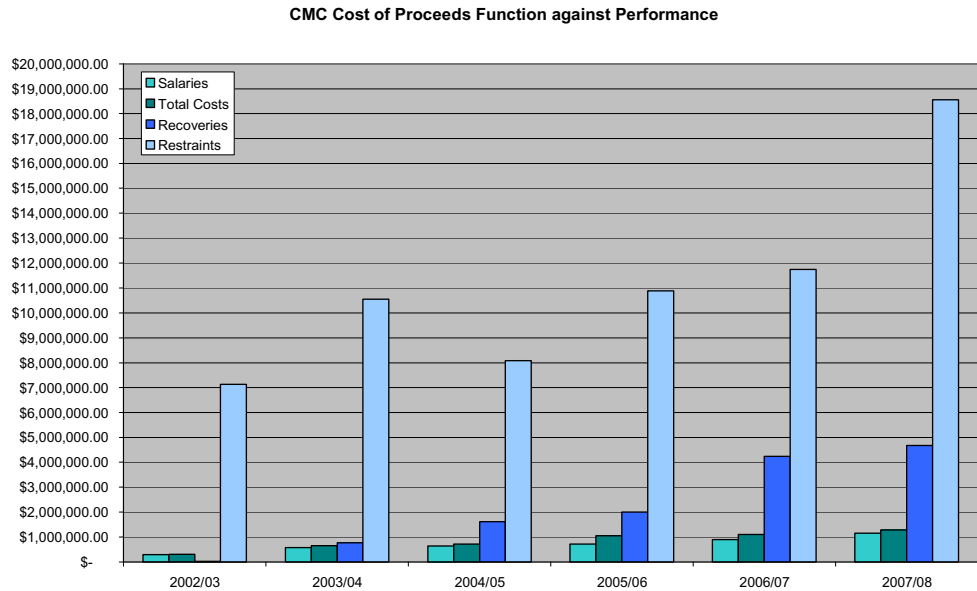


Figure 8 indicates that the CMC civil confiscation function has been revenue-positive since the first six months of operation and, as the function has matured, the rate of return to the consolidated fund has improved. Analysis of individual settlements reveals that, on average, 58.5% of the value of property initially restrained is forfeited to the State. At present property valued at almost \$50m is restrained under the civil confiscation scheme, representing prospective future returns to the consolidated fund of approximately \$29m if the settlement ratio remains consistent.

Figures 9 and 10 plot the number of CMC staff dedicated to the civil confiscation function against performance as measured by the value of property restrained and forfeited. Due to the specialised training and skill set needed for officers working in this function there is a time lag between the recruitment of new staff and full productivity. Nevertheless, the charts indicate the positive impact of increased staff resources on the performance of the function.

Figure 9

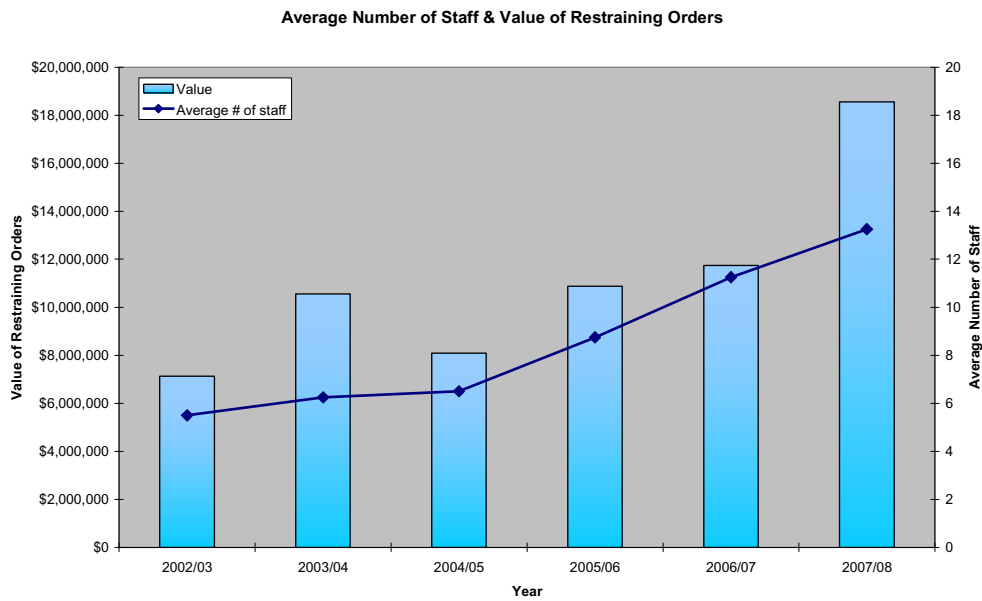
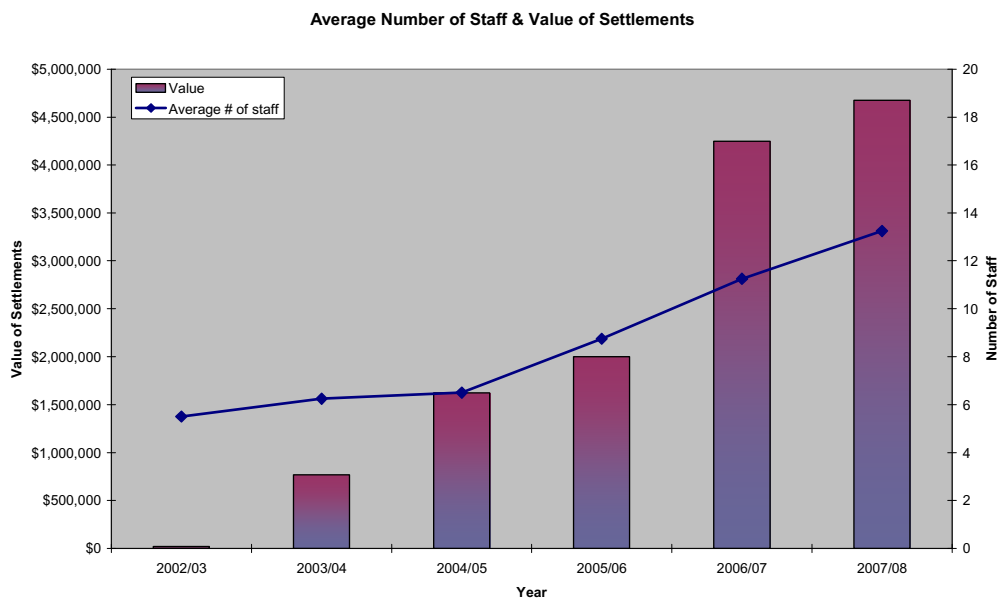


Figure 10



BENCHMARKING

The legislative basis and structure of the CMC proceeds of crime function is very similar to the legislation and structure of the New South Wales civil confiscation scheme. The New South Wales Crime Commission has administered the civil confiscation scheme in that state since 1990 and consequently provides a useful standard for benchmarking the Queensland performance.

Figure 11 compares the total value of confiscation orders made in the first six years of operation of the New South Wales scheme with the first six years of operation of the Queensland scheme. Figure 12 compares the average value of a confiscation order over the same six-year period. On both comparisons Queensland compares favourably.

Figure 11

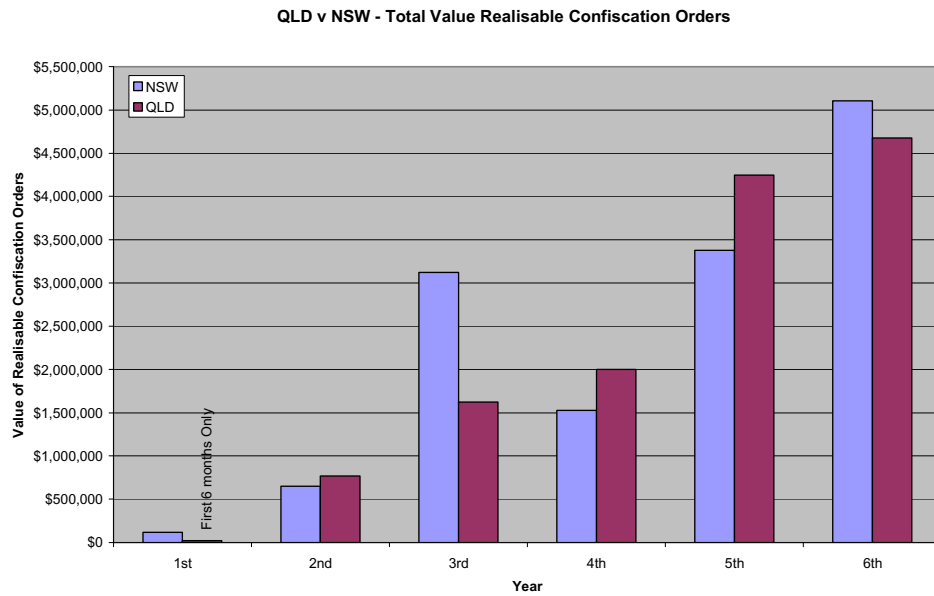
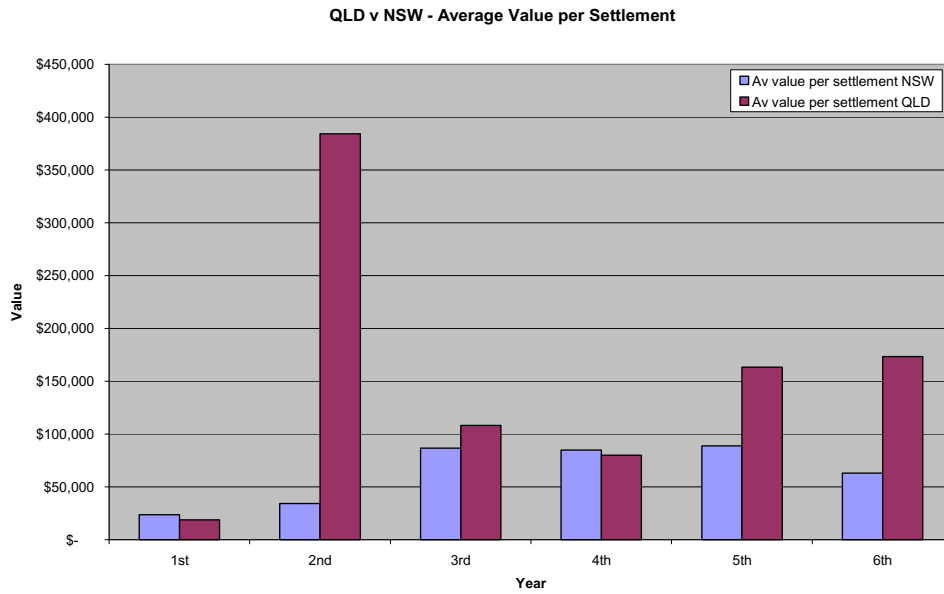


Figure 12



Figures 13 and 14 compare the cost of the New South Wales function with Queensland and the average cost per order (restraining orders and confiscation orders) in each jurisdiction. Again Queensland compares favourably.

Figure 13

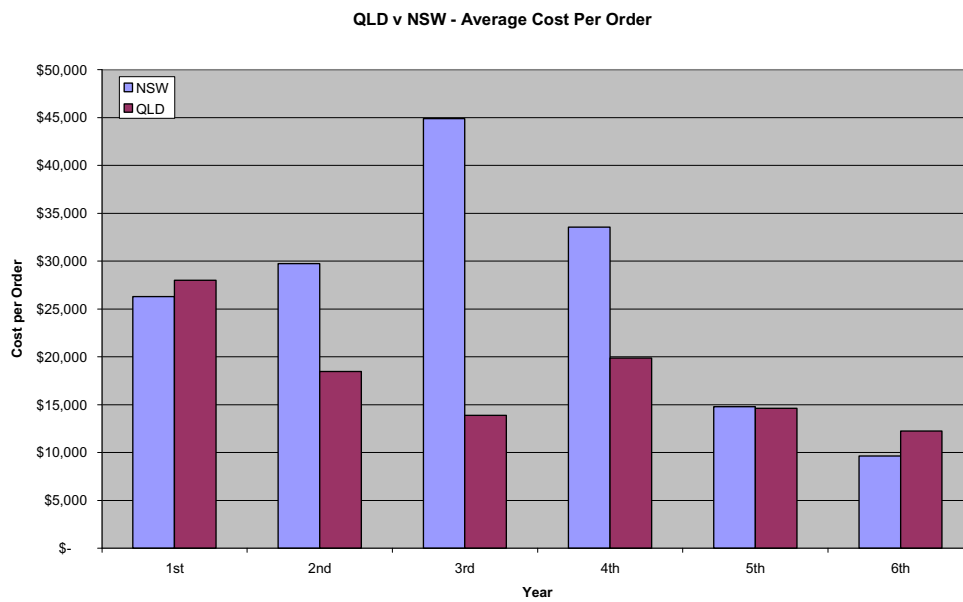
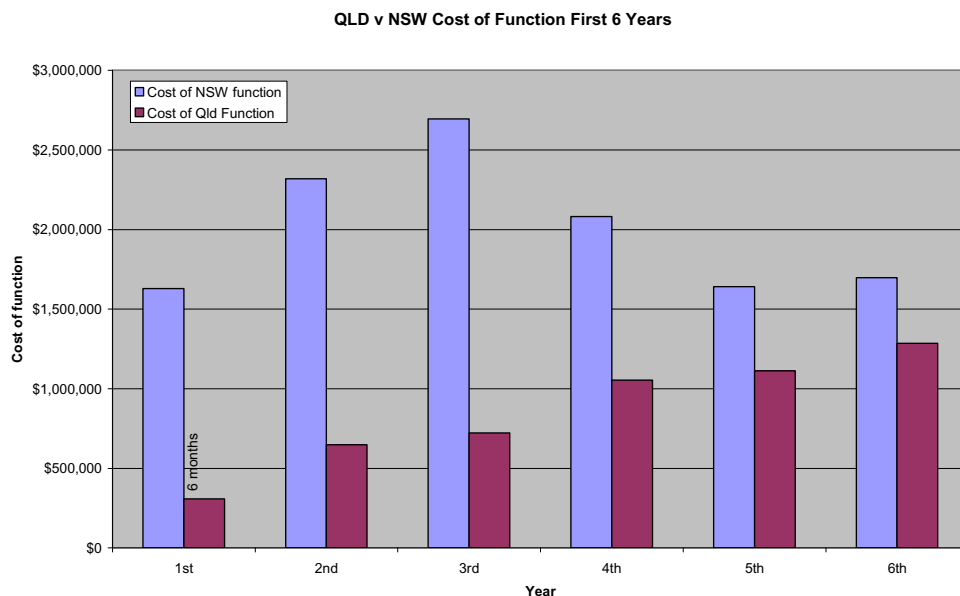


Figure 14



EMERGING ISSUES

Managing growth

The growth in the number and value of restraining orders and concluded matters to date has largely been driven by increased awareness of the availability of the civil confiscation scheme among police officers and greater integration of proceeds of crime recovery into investigation strategies. These factors will continue to drive growth in the function for some years yet; however, there are also other factors which will contribute to continued growth into the future.

In addition to the current drivers of growth, the following factors have the potential to escalate growth beyond the levels seen to date:

- ▶ Improved identification of potential proceeds of crime matters by QPS. The rollout of the new QPrime system of crime recording will allow proceeds of crime officers at QPS to more effectively identify crime incidents with potential for proceeds of crime recovery. This is expected to result in an increase of proceeds of crime matters dealt with under both the civil confiscation scheme and the conviction-based scheme.
- ▶ Increased range of criminal activity subject to proceeds of crime recovery. At present more than 90% of proceeds of crime matters concern drug related crime. This concentration of activity differs from the Commonwealth experience where 73% of offences dealt with under the Commonwealth confiscation legislation are fraud related. In monetary terms the value of fraud related crime is likely to be greater than drug related crime. There is no legislative impediment to proceeds of crime recovery in relation to fraud offences; however, recovery of proceeds under the confiscation legislation may impede the ability of victims to recover their losses through restitution orders.

- ▶ Expansion of the scope of confiscation legislation into new areas. The Victorian confiscation legislation enables confiscation action to be taken to restrain property of persons who may become liable to criminal compensation orders. The Queensland legislation does not currently extend into this realm. The Queensland legislation also does not currently apply to some forms of criminal activity which potentially yield high-value benefits to the perpetrators, for example, environmental crimes such as stealing water and illegal timber harvesting and high volume–low value economic crime such as pyramid schemes.

The CMC Proceeds of Crime Team is at full capacity and struggling to meet the demands of the current workload. Continued increases in demand for proceeds of crime recovery action will be beyond the capacity of the current resources and will require supplemental resources or the imposition of artificial barriers to limit growth. Demand-reduction strategies carry the risk of derailing initiatives to increase awareness of the function among police and creating a disincentive to refer appropriate matters.

Impact of the review of the legislation

The *Criminal Proceeds Confiscation Act 2002* is currently subject to review. The CMC and other interested parties have made submissions to that review, however, the outcome of the review is not yet known. Until the outcome of the review is known it is impossible to estimate the impact of any changes to the legislation or any consequential need for new or additional training, changed structures and processes and/or additional resources.

Offshore property

As the criminal community becomes more aware of the civil confiscation legislation and its impact on their activities there will be greater motivation for criminally derived property to be held outside the Australian jurisdiction. This trend is beginning to show in Queensland and has affected other state jurisdictions to varying degrees. The identification and recovery of property held outside Australia is problematic and imposes additional demands on already strained resources.

Experience locally and in other jurisdictions indicates that increased resources applied to proceeds of crime recovery yield positive net results. The CMC requests the committee's support for increased funding for the CMC's proceeds of crime recovery function.

Chapter 5: Continuously improving integrity and reducing misconduct in the Queensland public sector

This chapter gives an overview of the CMC’s functions and strategies to improve integrity and reduce misconduct in the public sector, including the QPS, and identifies some challenges and future directions.

OVERVIEW

Both the CMC’s misconduct and prevention functions are focused on continuously improving the integrity of, and reducing the incidence of misconduct in, the Queensland public sector.

The Act embodies the notion that responsibility for this is not the CMC’s alone, but rather is the joint responsibility of the CMC and public sector agencies themselves. Since the last PCMC 3 Year Review that notion has become more accepted within the public sector.

Specifically, the aim of the CMC’s misconduct functions is to raise integrity and standards of conduct in the Queensland public sector, and ensure that any complaint which involves or may involve misconduct is dealt with appropriately.

The CMC seeks to raise integrity and standards of conduct through its complaints management, investigations, capacity building and prevention.

In relation to complaints, the CMC has primary responsibility for dealing with complaints of official misconduct³⁴ within public sector agencies, including the QPS. However, the QPS has primary responsibility for dealing with police misconduct³⁵, while the CMC retains a monitoring role, albeit not as strong a role as it has for official misconduct.

Through application of the devolution principle and with the increasing maturity of the sector, in effect, more and more public sector agencies are taking on greater responsibility.

Ensuring that complaints are dealt with appropriately is not just about ensuring that possible inappropriate conduct of an agency employee is addressed. Dealing with a complaint provides a way in which to identify and address any systemic issues, control failures, policy and procedure deficiencies or workplace issues, including poor standards or culture, and client service issues. The focus is on learning from complaints to improve integrity and reduce misconduct, and thus provide enhanced services to the public.

³⁴ ‘Official misconduct’ is defined in Section 15 of the Act as “conduct that could, if proved, be – (a) a criminal offence; or (b) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or was the holder of an appointment.”

³⁵ Police misconduct (which relates only to police officers) is any conduct – other than official misconduct – that is disgraceful, improper or unbecoming a police officer, or demonstrates that person’s unfitness to be or continue as an officer, or does not meet the standard of conduct that the community reasonably expects of a police officer.

The Commission continues to hold the firm view that a strong culture of integrity requires public sector managers to accept responsibility for the culture and behaviour of their workplace and for reducing the risk of misconduct. With the responsibility comes the need for support, both internal and external, to build managers' capacity to make sound management decisions and their confidence in doing so. In this model, accountability and transparency are also essential to maintain public confidence.

Further, a truly integrated system designed to improve integrity and reduce the incidence of misconduct requires not only a partnership approach between the CMC and the public sector, but collaboration between the CMC and other peak and key monitoring and oversight bodies within the public sector.

PERFORMING THE MISCONDUCT FUNCTIONS

The Act outlines the number of ways in which the CMC performs its misconduct functions, including assessing complaints made to it by members of the public or notified by public sector agencies, monitoring how agencies prevent and deal with misconduct, and investigating.

Under the CM Act, when performing these misconduct functions, the CMC must apply the principles set out in section 34 of the Act, namely:

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

The application of the principle of devolution in the assessment of complaints of misconduct provides the mechanism for giving public sector managers responsibility to prevent and deal with misconduct; the CMC's capacity-building role (and prevention function) provides for support for managers to help them enhance integrity and prevent and deal effectively and appropriately with misconduct; and the CMC's monitoring role establishes an important accountability mechanism, which also provides information about any deficiencies in capacity.

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

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

HOW THE CMC MANAGES COMPLAINTS

Complaints management encompasses the receipt and assessment of complaints and monitoring the way in which they are dealt with by the public sector agencies. These functions are integrated with our capacity building role and prevention function.

The focus of our complaints management is:

- ▶ to give, in appropriate cases, public sector managers responsibility for enhancing integrity and reducing misconduct within their agency through dealing with complaints;
- ▶ to support managers in this by providing an effective complaints-handling system, which allows agencies to deal with misconduct in a timely and appropriate way (and help build their capacity);
- ▶ to help build public sector manager's capacity; and
- ▶ to satisfy the public interest by:
 - monitoring the way in which agencies deal with particular cases of misconduct, and identifying any deficiencies in their capacity to do so; and
 - investigating the more serious complaints of misconduct.

Complaints Services performance

Complaint Services continues to have responsibility for the receipt and assessment and monitoring of complaints, as well as a capacity building and prevention role.

The Section was re-structured in 2006-07 to maximise the effectiveness of the monitoring, capacity-building and prevention functions and enhance client service. The structure supports a focus on increasing our knowledge and understanding of the various component parts of the public sector. Complaints Services now has a Queensland Police Service Program and a Public Sector (including Local Government) Program, supported by a Directorate. Each program is responsible for receiving and assessing complaints, and monitoring and capacity building projects and activities for its part of the sector. Feedback from the public sector agencies and the QPS is positive about the benefits and effectiveness of this restructure.

Other benefits continue to flow from the review of complaints services and subsequent on-going enhancements to the complaints management processes and practices. There remains a particular focus on timeliness, effective and efficient workflow, and effective decision-making.

We have continued to maintain a focus on the timeliness of our assessments. The delegation of authority to assess the most appropriate action for dealing with a complaint to various officers at appropriate levels has assisted us in continuing to achieve our target of 85% of complaints assessed within 4 weeks of receipt (see results in Table 1 below). The further reduction in processing complaints through an extension of section 40 directions³⁶ to all departments and larger agencies, and to some of the larger councils in the local government sector, has also been of benefit.

³⁶ Section 40 of the Act enables the CMC to modify the obligation of a public official to report and allows us, in effect, to pre-assess certain categories of complaints to enable agencies to start dealing with them straight away, and agencies to report on a monthly basis to us about them.

More recently we have also greatly improved the timeliness of our reviews of individual complaints dealt with by agencies (see Table 1). More resources have also been directed towards monitoring, with the training of Misconduct Investigations staff, including police to also perform that function when resourcing requirements permit.

Table 1 Matters assessed and matters reviewed

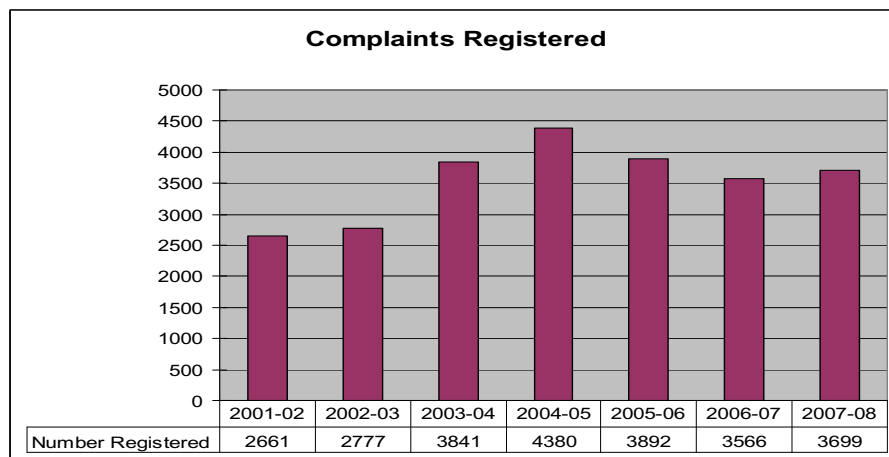
	2006-2007	2007-2008	2008-2009 (Quarter 1)
Matters assessed	3565	3678	958
% assessed within 4 weeks	92%	85%	91%
Matters reviewed	206	251	90
% reviewed within 4 weeks	49%	75%	92%

Receipt and assessment of complaints

Complaints received

There was a slight increase in complaints received in 2007-2008, in comparison with the previous year, but a slight decrease over the last two years in comparison with the three years prior. Generally, over the last 7 years there has been a gradual upwards trend in complaints (see figure 15).

Figure 15 Overall numbers

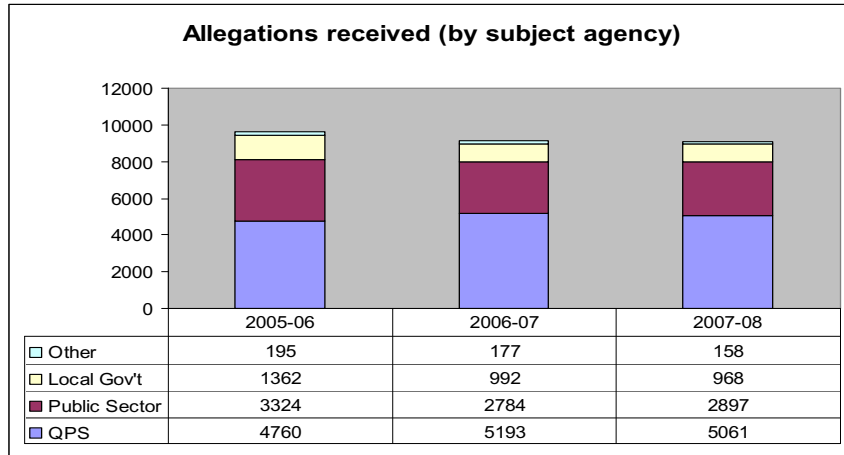


In 2007-2008, 3699 misconduct complaint matters were registered by the CMC. In 2006-2007, 3566 were registered and 3893 in 2005-06.

It is difficult to predict the number of misconduct complaints that will be referred to the CMC in any year.

In 2007-2008, the 3699 matters received contained over 9000 separate allegations of misconduct (one complaint may consist of a number of allegations). Of these allegations 56 per cent related to police, 32 per cent to public sector agencies, 10 per cent to local government, and 2 per cent for the remainder (primarily politicians). Figure 16 shows the breakdown of these complaints for the last three years - police, public sector, local government and other.

Figure 16 Breakdown of allegations (by subject agency)



It is not surprising that the significant proportion of complaints concern the QPS, given its functions, the powers and responsibilities of police and the nature of contact with the community.

Sources of misconduct complaints

Complaints about possible misconduct come to the CMC from a number of sources, including the general public and public sector agencies.

Figure 17 shows the sources of complaints for the last three years – complaints referred directly to the CMC (mainly by the public), complaints referred by the relevant agency under their statutory obligation imposed by Section 38 of the Act (including complaints that they received from the public) and other referrals.

Figure 17 Sources of complaints

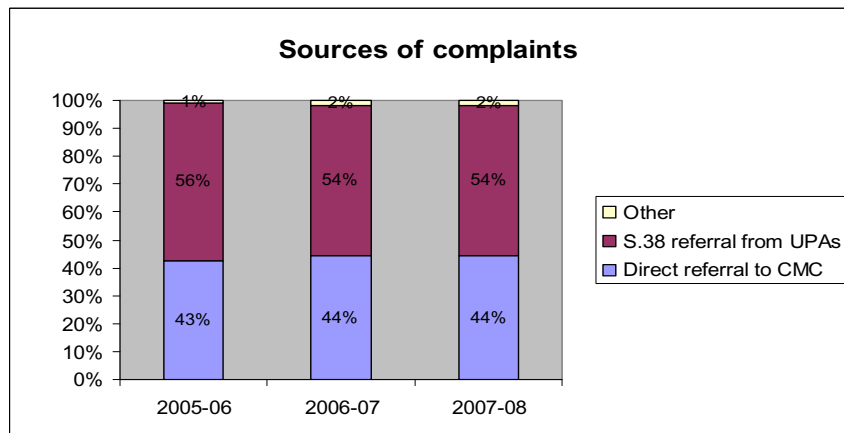
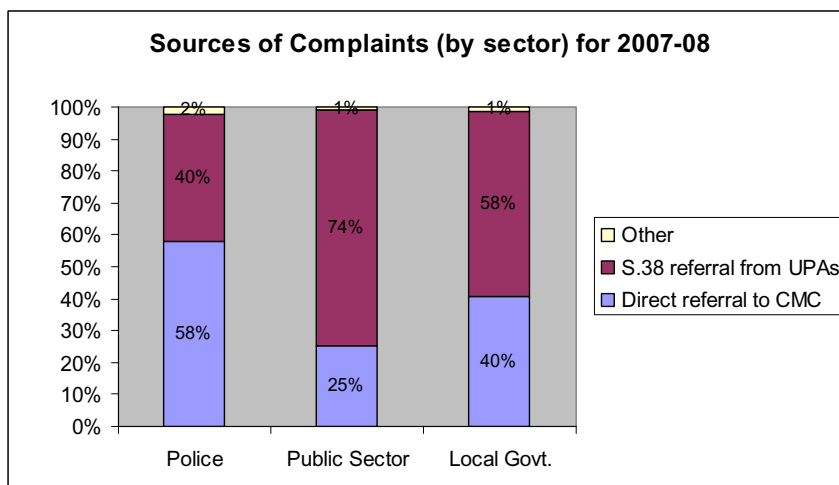


Figure 18 shows a more detailed breakdown of the sources of complaints received in 2007-08 for each of the main three sectors – police, public sector and local government.

Figure 18 Sources of complaints by sector



As can be seen from Figure 18, the percentage of complaints that are made direct to the CMC by members of the public varies depending on the sector - QPS, public sector and local government.

Of the complaints against police in 2007–08, 58 per cent were made direct to the CMC; 40 per cent were referred to us by the QPS (and 28 per cent of the 40 per cent were made by members of the public direct to the QPS).

In contrast, only 25 per cent of complaints about public sector agencies (excluding local government) were made direct to the CMC in 2007–08; 74 per cent came from the agencies themselves (and 23 per cent of the 74 per cent were received from the public).

For local government (including Indigenous councils), 40 per cent of complaints received in 2007–08 were made direct to the CMC; 58 per cent came from the CEOs of local councils (and 18 per cent of the 58 per cent came from the public). For Indigenous councils alone, 38 per cent of complaints in 2007–08 were made direct to the CMC; 45 per cent came from the CEOs (and 9 per cent of the 45 per cent came from the public).

Generally the whole of the public sector has a better understanding of the obligation to notify the CMC of complaints and of the reasons for that obligation. There is an apparent increasing understanding of the necessity be transparent and accountable.

Assessment of complaints

Table 2 gives a breakdown of the assessment decisions for those matters assessed in the 2006-07 and 2007-08 years and for the first quarter of the current financial year.

Table 2 Assessment decisions

Assessment decision	2006-2007	2007-2008	2008-2009 (quarter 1)
Referred to agency (outcome advice only ³⁷)	2640 (74.1%)	2668 (72.5%)	722 (75.4%)
Referred to agency (subject to review)	251 (7.0%)	337 (9.2%)	70 (7.3%)
CMC investigation	71 (2.0%)	60 (1.6%)	9 (1.0%)
No further action warranted	603 (16.9%)	613 (16.7%)	157 (16.3%)
Total Number of Matters Assessed	3565 (100%)	3678 (100%)	958 (100%)

The fact that a complaint is made to the CMC does not mean that there is any actual official misconduct.

A significant percentage of complaints received by the CMC are referred by public sector agencies. There is a low threshold for referral — there need only be a suspicion that a complaint may involve official misconduct for the agency to be obliged to report it to us. A mere allegation, without any evidence to support it, is enough to meet the threshold.

On closer examination, many complaints clearly do not involve official misconduct, though they warrant some response from the relevant agency.

Similarly, many complaints on closer examination do not involve police misconduct, but warrant some response by the QPS.

In this light, and given the focus on the agency learning from complaints and preventing them reoccurring, the high percentage of complaints referred to the agencies to deal with is not surprising.

Monitoring

In its monitoring role, the CMC conducts reviews and audits of complaints and quality assurance reviews of the integrity framework of public sector agencies and their capacity to prevent and deal with misconduct.

We have enhanced our monitoring function by the introduction of a ‘review coding instrument’ within COMPASS (our complaints management database) which enables us to capture consistent and detailed data about the complaints that we review; and by the development and implementation of enhanced audit and quality assurance methodologies.

³⁷ Audit samples taken from this population

The CMC continues to develop a more sophisticated framework for collecting, collating and analysing data about sections of the public sector, such as the QPS, which will help us to target our monitoring, capacity-building, prevention and investigation resources more effectively. Currently information drawn from various sources, including complaints data, monitoring activities, investigations, intelligence, and a review of any relevant legislative and environmental changes is presented for consideration, on a quarterly basis, in a document for each of the QPS, local government and public service sectors. Information gathered is also used to produce 'briefing sheets' for agencies.

Complaints, of course, cannot be solely relied upon to reveal an emerging trend or issue. Not always does official misconduct involve a 'victim' who is prepared to complain. The identification of risk areas and proactive investigations and monitoring/auditing are strategies which the CMC will explore further with public sector agencies.

Although timeliness is critical in our dealing with complaints, it is also an issue for agencies. We have a process for monitoring complaints that are with agencies to deal with (and which are to be reviewed by the CMC) and are older than six months. We are currently conducting a detailed analysis of 'outstanding' reviews to identify the factors that contribute to the time taken to deal with complaints. Many and varied factors impact upon timeliness and those may differ from agency to agency. One factor that may be common to all agencies is a tendency to fully investigate complaints that do not warrant that type of response. Other factors may include the unavailability of witnesses (e.g. on sick leave), the involvement of legal representatives, 'appeal' processes, including to the Industrial Relations Commission about the investigation process. We intend to code the various factors and capture the data for ongoing analysis as part of our review and audit monitoring activities. In any event, we continue to work with agencies to address this issue through our liaison meetings and other ad hoc discussions.

Reviews and audits

Our reviews focus on individual complaints that are referred to agencies after having been identified at our assessment stage as warranting scrutiny. (Reasons for this could include the need to maintain public confidence, or to follow up on possible systemic issues.) These factors also determine the extent to which we review the matter. We may review after the agency takes action, before it takes any proposed action or we may seek regular interim reports. In reviewing the complaint, we focus on compliance and integrity in the way in which the complaints are resolved, prevention issues and any capacity deficiencies that the agency may have.

Our audits variously focus on such things as compliance with standards, integrity of the manner in which complaints are dealt with generally, timeliness, and the way in which an agency is dealing with particular types of alleged conduct, for example, reprisals against whistleblowers. The random and targeted samples of complaints selected for these audits are taken from those referred to the agency to deal with, and which we have not individually reviewed ourselves.

For audits concerning compliance and integrity, we have developed an evaluation system that enables us to make an assessment of an agency's capacity to deal with complaints on a scale from 'very limited' through varying levels including 'competent' and 'highly developed' to 'advanced'.

We are also looking to develop a more sophisticated methodology for analysing the data captured in our reviews and audits to identify any trends and issues relevant to capacity.

Quality Assurance Reviews

Our quality assurance reviews look at an agency's integrity framework, including its policies, code of conduct, complaints and records management systems, and training and internal monitoring systems, including the following components:

Policies, including –

- ▶ Fraud control plan
- ▶ Conflict of interest policy
- ▶ Complaints management policy, including clear guidance in recognising and handling official misconduct
- ▶ Whistleblowers (or Public Interest Disclosures) policy
- ▶ Manual for the conduct of investigations
- ▶ Policy for the engagement of external consultants to conduct investigations
- ▶ Policies or protocols which govern management of complaints and information sharing with agencies having jurisdiction over complaint handling.
- ▶ Code of Conduct

Structures for the delivery of the agency's obligations under the *Crime and Misconduct Act 2001* –

- ▶ Section 38 obligation to notify
- ▶ Investigations
- ▶ Advice and support
- ▶ Internal Monitoring
- ▶ Prevention
- ▶ Identifying and addressing emerging trends and issues
- ▶ Training and Education

Management Systems –

- ▶ Complaints management
- ▶ Records management
- ▶ Performance indicators
- ▶ Training

The CMC also reviews a selected number of complaints dealt with by the agency which have not already been reviewed.

In addition it has regard to issues raised in day to day complaints handling, other monitoring activities and capacity building activities.

With the various limbs to our monitoring, the agencies are well aware that any matter that is referred to them to deal with may be subject to scrutiny by the CMC. This builds public confidence and encourages compliance with the appropriate standards for dealing with matters.

CAPACITY BUILDING AND PREVENTION

The CMC continues to view as particularly important its role to help build the capacity of public sector agencies to prevent and deal with misconduct. It carries out this role through a range of activities and projects including the production of publications and other material, the delivery of workshops and presentations, the provision of ad hoc advice and support and continuing liaison with agencies' chief executives and senior managers and CMC Liaison Officers as a group and/or individually.

In a number of sections of the public sector, there are instances of overlapping jurisdictions and areas of interest which require effective management to ensure the best outcomes and use of resources and consistency of advice. Some of the key monitoring and oversight bodies and peak bodies with which we have built partnerships and collaborate and work cooperatively include the Queensland Audit Office, the Ombudsman's Office, the Office of the Integrity Commissioner, the Public Service Commission, Crown Law, the State Coroner, the Health Quality and Complaints Commission, the Commission for Children and Young People and Adult Guardian, and the Local Government Association of Queensland. We have developed protocols in the health, child safety, education and local government sectors.

The CMC focuses on general sector wide capacity issues, such as investigation standards and understanding conflicts of interest, as well as identifying any specific capacity deficiencies of particular agencies through, for example, our monitoring activities. We continue to receive ad hoc requests for advice on how to deal with complaints referred to agencies, and on a range of prevention issues. This information is taken into account in developing our capacity-building projects and activities.

We will return shortly to the role of prevention arising from Misconduct Investigations.

Chapters 6 and 7 provide further information on our capacity building and prevention activities in relation to public sector agencies (including local government) and the QPS.

MISCONDUCT INVESTIGATIONS

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

We concentrate our efforts on matters such as major fraud, corruption and sensitive political matters. We also continue to investigate high risk areas involving the police. As part of the investigation process, we focus on identifying agencies' systemic or procedural weaknesses and develop recommendations to help them prevent recurrences.

The decrease in the number of investigations finalised in recent years reflects our concentration on those matters involving the more complex, systemic and contentious allegations of misconduct.

A successful conclusion to a CMC investigation may be the bringing of criminal charges or, just as importantly, the clearing of a person's name or the restoring of public confidence in a public sector activity or agency, a politician or the police.

In our pursuit of corruption and other serious misconduct, we use specialised resources in intelligence, financial analysis and forensic computing as well as proactive and covert investigative techniques.

We can also use our special powers, including the power to compel people to attend investigative hearings and to produce documents.

Investigation strategies

We use multidisciplinary teams to investigate serious misconduct. These teams comprise police and civilian investigators, financial analysts, lawyers, intelligence analysts and support staff. As soon as possible in an investigation we brief prevention staff so that they can assist the agency concerned with any remedial action.

Covert techniques

Our covert investigative capacity includes the use of surveillance, listening devices and covert operatives. These techniques may be used in investigating any form of alleged misconduct. We also have the power to conduct investigative hearings to which witnesses may be summoned to give evidence on oath concerning the matter under investigation, and to issue notices to require a person to give information on oath in an interview and to require a person to provide us with documents. These notices can require the person to whom they are addressed to maintain confidentiality with respect to the notices.

Public hearings

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

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

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

Intelligence gathering and target development

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

Since the last review, the SIU has assessed and carried out numerous target developments relating to misconduct matters.

In addition, two major projects were recently undertaken by the SIU in relation to misconduct with respect to the police service. Relevant aspects of the projects will be sought to be published later in the financial year in a public report to parliament in compliance with s.69 of our Act.

Prevention advice

Periodically a Misconduct investigation will commence which highlights systemic issues which contributed to the occurrence of the investigated event, or failed to adequately anticipate such an event occurring.

By working closely with the investigating team, prevention officers are able to be briefed on the nature of the misconduct and provide complementary input to the investigation report or provide specialist advice directly to the agency. This allows the agency to take remedial action at the earliest time possible, instead of waiting for the outcome of any disciplinary or court action.

Feedback from agencies about the quality and practicality of the prevention advice provided is most encouraging. It is acknowledged that the depth of advice typically provided by us is highly valued by the recipients, as in most instances they find it difficult to objectively analyse the misconduct event against the background of their prevention activities to determine weaknesses in their policies, guidelines or controls.

Achievements

In 2006-07, we completed 107 investigations and 93 were finalised in 2007-08. We expect to complete 90 investigations for the 2008-09 year.

Of the 93 matters finalised in 2007-08, 64 related to the QPS, 16 were public sector complaints, and 13 related to local government.

Seventy-six per cent of investigations completed in 2006-07 were finalised within 12 months, with the target being 85 per cent. The achievement for 2007-08 was also 76 per cent within 12 months. We continue to look for ways to streamline our investigative work, while remaining mindful of the need to balance speed with thoroughness and fairness.

The number of investigations over 12 months old still on hand at the end of June 2008 was 5; this rose to 17 as at 30 September 2008. Some of these matters reflect the most complex of CMC investigations where extensive financial and/or covert inquiries are being undertaken and which, by their nature, are very lengthy and resource-intensive.

In the 2007-08 year, 25 per cent of finalised matters resulted in recommendations for criminal, disciplinary or managerial action. This included 152 charges against 48 persons. In addition, a further 64 criminal and disciplinary charges were recommended in that year as a result of other CMC investigations which were not finalised in 2007-08.

Here are examples of investigations conducted since the last review, beginning in 2006 and concluding with the current and ongoing operations.

- ▶ **Prince Charles Hospital investigation** — In May 2006, Queensland Health requested the CMC's assistance in investigating allegations of misconduct related to the appointment, in late 2003, of Virginia Hancl as Nursing Director at the Prince Charles Hospital in Brisbane.

The investigation found that, when Ms Hancl applied for the position, her résumé included a reference to a Master of Public Administration from the University of Tasmania which she did not have. The CMC recommended that Queensland Health consider taking disciplinary action against Ms Hancl on the basis that she ought to have known that an objective reader of her résumé could have been misled by her statement in relation to the degree, and that Ms Hancl did nothing to correct any wrong impression. However, the evidence showed that the university degree was not a determining factor in her successfully obtaining the position of Nursing Director.

The CMC also found evidence that Ms Hancl nominated her de facto partner as her referee but failed to disclose this potential conflict of interest to the selection panel. The department was asked to consider disciplining Ms Hancl for a possible breach of the code of conduct.

In addition, the CMC investigated allegations that three senior health officials took disciplinary action against a Queensland Health doctor because, or in the belief that, he made or might make a public interest disclosure under the Whistleblowers Protection Act 1994 in relation to the allegations against Ms Hancl. The CMC found that there was no evidence of reprisal by the three officials.

- ▶ **Corrupt tendering process** — On 5 September 2006, a Public Works Department former employee, Don Mervyn Samartunga, was found guilty of corruption and received a nine months' suspended jail sentence following a CMC investigation into matters surrounding the Department's tendering processes. He was also ordered to pay restitution of \$7,500.

Samartunga encouraged a builder, Jan Thorsen, to supply a false invoice for \$8,200 worth of fictitious landscaping and other work because, after undertaking a building contract with the Department, Thorsen realised that he had underquoted for the contract work. Thorsen pleaded guilty to a charge of supplying a false invoice and was sentenced to three months imprisonment, totally suspended.

- ▶ **Douglas Shire Council** — The CMC investigated corruption allegations concerning the former Douglas Shire Council, and in October 2006 released a lengthy report on its investigation of numerous allegations against the mayor, the chief executive officer and councillors. It found that some allegations were without substance, others did not amount to misconduct, and the rest could not be proved on the available evidence. The CMC worked closely with the Ombudsman to ensure that the allegations which fell within the respective jurisdictions were effectively and efficiently dealt with.
- ▶ **Allegations of police assault** — On 7 February 2007 the CMC published a report on its investigation of the alleged assault of an Aurukun man, Warren Bell, while in police custody in January 2007. The only direct evidence of the alleged assault was the evidence of Mr Bell himself. However, there were significant inconsistencies in the accounts given by Mr Bell of his treatment while in police custody, which suggested that it would have been unsafe to rely on his evidence without supporting information from other sources. The CMC concluded that there was no ground for referring the matter to the Director of Public Prosecutions for possible criminal charges.

While the CMC made no adverse findings against any police officer in relation to an assault, it did refer its report to the QPS for consideration of disciplinary action in relation to the failure of police to videotape the complainant in his cell at Aurukun police station on the morning of the arrest. CMC Assistant Commissioner, Misconduct, Stephen Lambrides travelled to Aurukun to meet with senior members of the Indigenous community to discuss the outcome of the report.

- ▶ **Fraudulent road safety certificates** — On 4 May 2007, Edward Cornelius Moran, a former Queensland Transport inspector was sentenced to a total of seven years imprisonment for fraud and official corruption offences. Mr Moran was convicted following a nine-day trial in the Brisbane District Court. Four accomplices were earlier imprisoned for their involvement in the scheme whereby defective vehicles were issued with road safety certificates. Queensland Transport outlaid \$665,000 to re-examine those vehicles for which false road safety certificates were issued.

The prosecution followed a lengthy joint investigation undertaken by the CMC, Queensland Transport and the QPS. Mr Moran and his accomplices were responsible for the fraudulent issue of approximately 3,500 road safety certificates.

- ▶ **Jailing of former minister** — The CMC investigated allegations that former minister Merri Rose threatened to smear the reputation of a nominated individual unless the Queensland Premier provided her with a highly paid position in the public sector. The investigation resulted in her being sentenced in the District Court on 31 May 2007 to a term of imprisonment of 18 months, to be suspended after three months.

The CMC's Chairperson publicly commented that the jailing of former minister Merri Rose, for the offence of demanding a benefit with threats, served as a strong warning that people who seek to corrupt public servants do so at their peril. He also emphasised the value of early reporting of extortion threats.

- ▶ **Assault by a Minister** — In early July 2007, the CMC investigated a complaint that the then Minister for Emergency Services, Pat Purcell, had allegedly assaulted two departmental officers. Subsequently, the Minister resigned and publicly acknowledged hitting the two officers and apologised pursuant to a mediated result between the complainants and the former Minister. The matter did not proceed to hearing.
- ▶ **Police officer jailed on perjury and assault charges** — A former police constable, Justin Anthony Burkett, was jailed on 6 August 2007 for attempting to cover up an assault on a woman in a watch-house cell. He was sentenced to a total of three years imprisonment after pleading guilty to four perjury charges, two charges of attempting to pervert the course of justice, and one count of assault causing bodily harm. The judge ordered that the sentence be suspended after nine months.

Arising from the incident, another police officer was charged with attempting to pervert the course of justice and perjury. The officer has pleaded not guilty and has been committed to stand trial.

- ▶ **Investigation of Queensland Police Union** — The CMC commenced an investigation in August 2007 after the QPS had received information alleging that motor vehicles owned by the Queensland Police Union of Employees were being sold to executive members of the union (police officers), or their families, at prices significantly below market value. No charges arose from the investigations. However, the CMC wrote to the Industrial Registrar about the processes through which the union officials involved in the sale of motor vehicles carried out their financial management duties under the *Industrial Relations Act 1999*.
- ▶ **Allegations against a local government mayor** — Allegations of corrupt conduct against Councillor Ray Duffy, the Mayor of the former Burnett Shire Council, were not substantiated. Other matters came to light during the investigation, which resulted in charges against Mr Duffy for alleged breaches of the Local Government Act 1993, and this matter is currently before the court. Mr Duffy was also charged with four counts of providing false and misleading information during the course of the CMC investigation, and in September 2007 was fined a total of \$8 000 in relation to two of these charges and sentenced to three months' imprisonment, wholly suspended for three years, on the remaining two charges. Mr Duffy has appealed his conviction and sentence, but a decision on his appeal has not yet been handed down.
- ▶ **Conflicts of interest** — In October 2007, the CMC commenced an investigation into an allegation of official misconduct by the former Director-General of the Department of Employment and Training, Scott Flavell. The investigation included Mr Flavell's role and possible conflicts of interest in the establishment and development of a private skills training company while he was Director-General. Following his departure from the public service, Mr Flavell was appointed as a director and the chief executive officer of the company (he no longer holds these positions). As part of the investigation, the CMC held public hearings in relation to the matter in July 2008. A public report on pre- and post-separation employment will be released at the end of 2008.
- ▶ **Allegations of improper intervention** — In December 2007, the Premier contacted the CMC regarding concerns that Queensland Government ministers had instructed workers at the Departments of Child Safety and Health not to tell police about hundreds of cases of suspected child abuse and neglect on Cape York. No evidence was found to support the allegations.
- ▶ **Secret commissions** — In January 2008, the committal hearing began against former Queensland Government minister Gordon Nuttall and mining magnate Ken Talbot. Following a CMC investigation, Mr Nuttall was charged with corruptly receiving payments totalling almost \$300,000 from Mr Talbot between 2002 and 2005. The committal hearing has been adjourned and will consider whether Messrs Nuttall and Talbot should stand trial on 35 counts of receiving and paying secret commissions during the period when Gordon Nuttall was a government minister. Mr Nuttall has also been charged with corruptly receiving \$60,000 in 2002 from lawyer Harold Shand, who has been charged with making the payment. The committal hearing for this matter has commenced but is adjourned.
- ▶ **Allegations of police corruption** — The CMC is undertaking a series of proactive inquiries, codenamed Operation Capri, into allegations of possible police misconduct. In part, the investigations extend to issues involving the propriety of certain relationships between police officers and convicted criminals. The allegations are wide-ranging and complex, and we will seek to report publicly on the investigation later in the financial year.

FUTURE DIRECTIONS

Devolution

The CMC is embarking upon a project to progress devolution within public sector agencies, other than the Queensland Police Service (refer Project Verity, under Chapter 7).

While the public sector generally is more accepting of the principle of devolution, that is, action to prevent and deal with misconduct within an agency should generally be the agency's responsibility, not all have embraced the notion that public sector managers at the appropriate local level need to take responsibility for dealing with complaints.

The decision about which manager might be the appropriate local level manager depends to some extent upon the nature, scope and extent of the issues that arise from the complaint and any involvement of a manager in those issues. The appropriate manager is the one closest, as the circumstances of the complaint permit, in chain of responsibility to the business unit or workplace in which the issue arises.

A number of agencies have frameworks in place that give responsibility to deal with complaints to a centralised or regional internal unit and/or person, and often the manager of the work area from which the complaint arises is not part of the resolution and learning process. Certainly, if a complaint warrants an investigation it is usually not appropriate that the manager investigates the conduct of one of their staff – though they should not be excluded from the process unless they are the subject of the complaint³⁸. However, the CMC suggests that often a complaint should be dealt with other than by way of investigation, and that it is the manager who is best placed to take action to address the conduct of staff and any workplace issues, including identifying and, in many cases addressing, systemic issues, policy and procedure deficiencies, and poor standards of behaviour.

Obviously there are many factors that impact upon the success of local level managers taking responsibility.

Anecdotally, some local level managers feel disempowered and lacking in confidence in decision-making about matters affecting their workplace because of a lack of support from more senior managers. They perceive that when more senior managers simply disagree with the particular actions taken by them in good faith there will be an adverse consequence for them. There is a perception that they may be made 'scapegoats' by more senior managers for perceived poor outcomes.

There is also genuine concern on the part of more senior managers about the skills level of some managers.

These and other issues may make effective implementation of devolution within an agency challenging, but should not be seen as creating an insurmountable barrier.

A policy that places the responsibility to make decisions and take action on a manager too far removed from the source of the issue undermines the capacity of an agency to build a strong culture of integrity and reduce misconduct.

³⁸ Amongst other things, the manager needs to manage the impact of the investigation upon the workplace and respond to any emerging issues (e.g. deficiencies in policy and procedures, poor workplace standards and behaviours) as soon as possible, not wait until after the investigation. The manager can also help the investigator through facilitating access to witnesses and documentary evidence.

The notion of a manager at the appropriate local level taking responsibility should not be transient, entirely dependent upon whether an agency has a centralised or regionalised structure. An organisational structure will, of course, dictate levels of decision-making and reporting regimes, but should not arbitrarily raise the level of responsibility for dealing with complaints, which should be as close to the local level as the circumstances dictate. Certainly, a person in head office should usually not be making decisions for district middle managers about the conduct of their staff and any workplace issues arising from a complaint.

The project will explore all the issues and look to develop a set of principles and a model to give effect to devolution within an agency.

Increasing focus on monitoring and capacity building

It is important that the CMC through our monitoring function and capacity building role ensures that complaints are dealt with appropriately and, at a more strategic level, that public sector managers effectively take responsibility for developing a strong culture of integrity and reducing misconduct. We are focussing more on this area.

Over time we have been allocating more of our Complaints Services resources to monitoring and capacity building as a result of freeing up some resources through reducing complaints processing. Of some benefit in this regard has been the extension of section 40 directions which allows agencies to report less significant matters by way of schedule to us on a monthly basis. As public sector agencies develop greater capacity, as evidenced by the outcome of our monitoring activities, there is an opportunity to further expand and extend the section 40 directions.

Notwithstanding, a significant proportion of Complaints Services' resources continue to be taken up with simply processing complaints. Our ability to continue to re-focus more of our resources on monitoring and capacity building is limited without a major policy change.

The CMC is currently exploring possible strategies which will enable it to significantly reduce processing, but retain the ability to be made aware of all complaints of possible official misconduct, while increasing its focus on monitoring and capacity building. For example the CMC could further reduce complaints processing by adopting the approach that for certain categories of complaints, the complainant must make the complaint direct to the agency concerned in the first instance. The agency would be required to receive, record and notify the CMC of the complaint, so that the CMC could maintain its monitoring role. The apparent increasing willingness of agencies to be transparent and accountable and notify the CMC of complaints gives us a basis to think that this approach could be quite effective.

Information technology

Access to technology solutions to minimise the resources taken up in processing complaints and facilitate our monitoring and capacity building activities remains an issue for the CMC. As previously identified there are various possible medium-term and long-term options — such as agency access to the CMC’s complaints management system (COMPASS), to enable direct entry of complaints data; or a sector-wide database that makes possible ‘real-time’ CMC monitoring of the management of complaints by the agencies. The feasibility of these options will need to be explored. However, it is acknowledged that there are significant technical and other issues that need to be addressed.

As a first step the CMC is looking to commence a trial with Queensland Health which will give their ethical standards unit access to a secure part of COMPASS. The intention is that the department will notify the CMC of complaints by directly recording the details of those complaints in COMPASS. Queensland Health’s ethical standards unit will use COMPASS functionality to case manage the complaints, which will allow the CMC to more readily monitor how those complaints are being dealt with.

Complaints management by agencies

It remains a problem for agencies to manage complaints of misconduct that also involve alleged criminal conduct, which may be investigated by the police. An attempt to address this problem by allocating a police position to the Shared Service Providers, as recommended by the audit report of the Department of the Premier and Cabinet, did not succeed.

The CMC has previously identified this issue with key agencies in the sector, and suggested possible strategies in the shorter term to address the issue.

In the longer term, it may be appropriate to empower agencies to investigate minor criminal matters and deliver briefs directly to the prosecuting authority, in the same way that many agencies have enforcement sections to deal with breaches of the legislation for which they are responsible. In the meanwhile, legislative changes appear to be necessary:

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

It would also strengthen the ability of agencies to conduct investigations of complaints, if the ability to direct employees to answer questions, even though those answers might incriminate them, had a firm specific legislative foundation. At the moment, the agencies rely upon an advice of the Solicitor-General in respect of the previous *Public Service Act*.

The CMC understands that it is intended to amend the *Public Service Act 2008* to enable disciplinary action to be pursued, in appropriate circumstances, even though the employee resigns from the public service. Amendments to the Act will apparently also remove the uncertainty about the ability to pursue an internal investigation and disciplinary action if an employee moves or is seconded to another agency, and clarify the ability of agencies to cooperate and share information when dealing with a complaint – including by way of investigation – that involves employees from more than one agency.

The CMC's partnership with Crown Law and the Public Service Commission has been extremely important in attempting to ensure consistency of approach and advice given to the public sector, so that the regime under the CM Act can be given full effect. However, there have been concerning instances in which advice given by internal agency legal officers, human resource managers and private law firms has led to situations that have the potential to undermine that regime. The different sources of advice have resulted in striking inconsistencies and inequities in the way in which agencies deal with matters. They have also impacted upon the way in which agencies approach matters before the Industrial Relations Commission and the courts concerning issues relating to compliance with the *Crime and Misconduct Act 2001* and the standards for investigation issued by the CMC as part of its *Facing the facts* publication. Of particular concern is that the CMC as a general rule is not made aware of these matters, let alone consulted about them. The involvement of Crown Law would be a safeguard in these situations.

The CMC, in consultation with OPSC and Crown Law, have put in place strategies to combat this problem as best we can. However, it has become clear that the only way to ensure that consistent advice is given to avoid the possibility of undermining this regime is to tie agencies to obtaining advice from Crown Law in relation to issues arising under the regime.

The CMC seeks the committee's support for agencies to be required to obtain advice from Crown Law in relation to issues arising under the regime of the CM Act.

Chapter 6: CMC's work with the Queensland public sector (including local government)

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

ASSESSMENTS

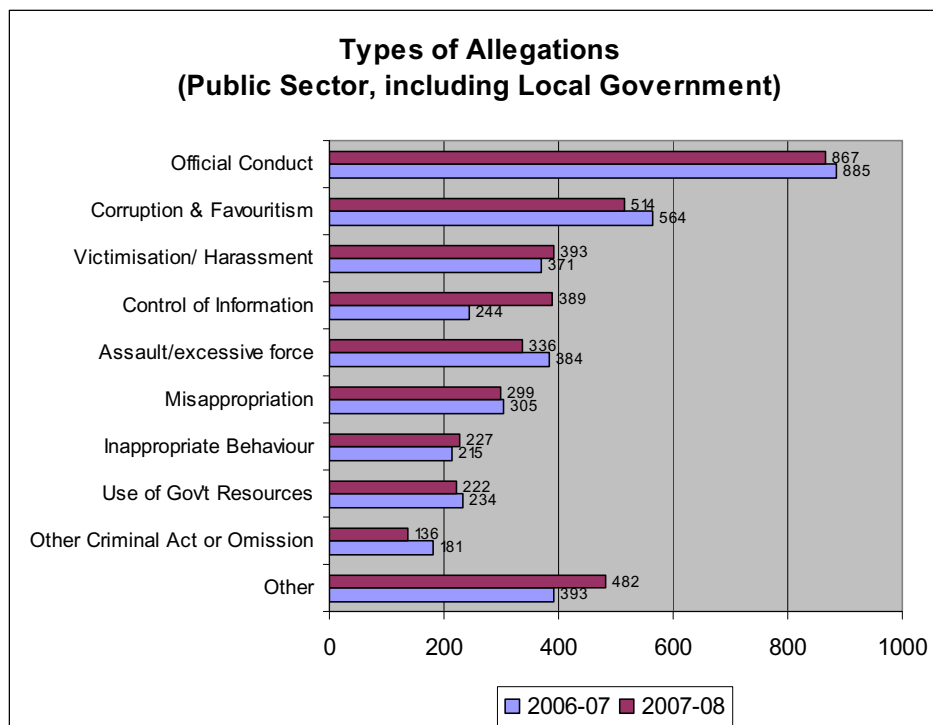
The total number of public sector (including local government) complaints received in the 2007-2008 year was 1855, compared with 1667 in 2006-2007 and 2147 in 2005-06. The sources of complaints were discussed earlier in Chapter 5.

The complaints received involved 3865 (2007-2008) and 3776 (2006-2007) allegations against 2469 (2007-2008) and 2328 (2006-2007) subject officers.

Figure 19 shows the types of allegations that were reported in those two years. The most common allegation types continue to be official conduct (such as inappropriate exercise of powers), corruption and favouritism and victimisation/harassment, although the types of allegations can vary from department to department depending on the nature of their core business.

Four large agencies — Health, Corrective Services, Education, and Child Safety account for the significant percentage of complaints made against the public sector. This is no doubt indicative of the large scale of operations undertaken by these departments, their staff numbers and the level and nature of their interaction with the public.

Figure 19 Types of allegations



MONITORING

In 2006–2007 and 2007–2008 the CMC reviewed a total of 237 complaints dealt with by public sector agencies. For 28 of those matters (12% of the total matters reviewed), we were dissatisfied with the way in which the matters were dealt with by the relevant agencies. In those cases, we identified a number of capacity and systemic issues and made recommendations to address those issues. In five of these cases, the CMC assumed responsibility for the matters.

We conducted compliance and integrity audits of complaints dealt with by 7 public sector agencies — the Departments of Public Works, Communities, Primary Industries and Fisheries, Natural Resources and Mining, and Emergency Services, Disability Services Queensland and the Brisbane City Council. We examined a total of 133 complaints in the course of those audits. All agencies responded positively to our recommendations.

We completed quality assurance reviews of Queensland Health, Education Queensland, the Department of Child Safety, Queensland Corrective Services, and the Townsville City Council, and have commenced a review of the Gold Coast City Council. As the first three agencies listed were at the time embarking upon an internal review of their integrity framework, the CMC provided an interim report and indicated that we would return in due course to conduct a further review. The recommendations made in the reviews were generally well-received by the agencies.

CAPACITY BUILDING AND PREVENTION

The CMC builds capacity to prevent and deal with misconduct through a variety of projects and ongoing activities, including providing advice, support and relevant resources, conducting workshops and information sessions, meeting with chief executives and senior managers in public sector agencies, outreach activities (such as liaison meetings and visiting rural and regional areas), working with other oversight agencies, working with Indigenous communities, and conducting research.

We believe that the range of capacity building and prevention measures we have developed and use through the networks we have forged has made a significant contribution to the minimisation of occurrences of misconduct in the public sector. We are seen as a lead anti-corruption agency in Australia and the work we have done is highly regarded nationally and internationally.

Advisory programs and development of misconduct resources

The CMC continues to build the capacity of agencies through the production of materials focussed on a range of misconduct risk areas. Their aim is to provide an authoritative misconduct prevention advisory resource, and to help agencies formulate strategies to minimise the risks associated with those areas. We currently produce resources such as research papers, guides, toolkits, training materials, manuals, articles and advisory pamphlets on prevention and dealing with misconduct. These resources have been made available to all public sector agencies via hard copy and have also been placed on our website, or in some cases, the website of collaborating agencies.

Wherever possible we collaborate with our lead agencies in producing our material.

Councillor information kit

The 2008 Councillor Information Kit for elected Councillors and CEOs was developed in collaboration with the Local Government Association Queensland (LGAQ), the Department of Local Government Sport and Recreation (DLGSR), the Queensland Ombudsman's Office (QO), and Queensland Audit Office (QAO). We instigated this collaborative effort to provide councillors and CEOs with consistency in the detailed information provided to them.

This project has resulted in the Governance for the Elected Members (GEMs) training program, which the LGAQ is implementing throughout Queensland. The project has also enabled the development of a *Councillor Induction CD - a resource for local government CEOs*, which is being distributed. The CMC was significantly involved in the development of both, and liaises with the above-mentioned agencies to ensure important and relevant training and information is continuously provided to councillors throughout their term of office.

Gifts and Benefits paper

In July 2008, the Building Capacity paper *Receiving gifts and benefits: managing the risks* was updated from its original June 2006 publication. The update came about due to the Public Service Commission (PSC) updating their "*Policy for the giving and receipt of gifts and benefits by employees of the Queensland Public Service*", effective as of 10 December 2007. The PSC provided a draft of this policy to us for comment to draw upon our expertise and to ensure a consistent message is being provided by our two agencies.

Code of conduct guidelines and checklist for best practice

In November 2007 we published two companion Building Capacity series publications titled *Keeping your code of conduct relevant: Guidelines for best practice* and *Keeping your code of conduct relevant: A best practice checklist*. No guidelines had been produced on this topic since the 1995 Public Sector Management Commission (PSMC) *Guidelines for the Development of Codes of Conduct* following the release of the *Public Sector Ethics Act 1994*. The Guidelines and Checklist are a timely reminder to agencies that codes of conduct need regular review to remain relevant. They reinforce the message that ethical decision making is dependant upon suitable implementation of a strong code of conduct, including regular training, to ensure that public officials are always aware of current code requirements.

Handling confidential information: guidelines and policy for local governments

This publication, released in November 2007, was a collaborative project with the Department of Local Government, Planning, Sport and Recreation (DLGPSR). It aims to assist local government agencies to better handle confidential information by establishing effective standards and promoting best practice for local governments' approach to handling confidential information. The electronic resource, in the form of an information booklet, is available on the DLGPSR website.

Outside Employment: Risks and remedies

Since 2000, we have dealt with some 140 complaints containing allegations of unauthorised outside or secondary employment. In 2007, the Public Service Commission issued a directive to set guidelines for agencies covered by the *Public Service Act 1996*.

To complement this directive, and to help public sector agencies review the adequacy of their policies and procedures regarding this issue, in June 2007 we published the Building Capacity advisory publication *Outside Employment: Risks and remedies*. The publication provides guidance on managing the risks involved when government employees also engage in outside employment, including voluntary and paid work, partnerships and directorships of companies, operating a private business, or providing consultancy services.

Public–Private Partnerships: Identifying governance risks

Our Building Capacity advisory publication *Public–Private Partnerships: Identifying governance risks* (March 2007) has been made widely available to the public sector in both hard copy and on our website. This had its origins in the public–private partnerships (PPP) policy released by the Queensland government, encouraging private sector involvement in public sector projects to “achieve a better value for money outcome.” Some concern was expressed that checks and balances which are brought to any state government project (such as publicly available evaluations and other transparency mechanisms) might be sidestepped when the responsibility for their upkeep is given to the private sector. Accordingly, we examined the corruption risks inherent in PPP, assessed state government policy and the local government uptake of PPP, and proposed recommendations.

Ethics, Probity and Accountability in Procurement

This 38-page best practice guideline booklet on Ethics, Probity and Accountability in Procurement was jointly developed by the CMC and Queensland Purchasing (QP) and published in October 2006. The publication is an important preventative measure as it provides information, guidance and advice to all those involved in the procurement process.

Sponsorship Management: Achieving mutually beneficial outcomes

The Building Capacity advisory publication *Sponsorship Management: Achieving mutually beneficial outcomes* (September 2006) was developed by us to provide the public sector with clear information about the corruption risks of sponsorships, and to provide best practice guidelines for effective management of the issue – rather than allowing agencies to simply rely on the deterrent effects of penalties arising from investigations. Moreover, this publication stresses that regardless of the outcome of an investigation, the poor or unethical management of sponsorship can significantly impact upon the overall ethical climate of an organisation.

Managing Public Records Responsibly

We collaborated with the Queensland State Archives in developing a joint guideline on the retention and management of public records entitled *Managing Public Records Responsibly*. The publication targeted, in particular, those records held by elected officials and their staff, in the periods leading up to the 2007 election for the Queensland Legislative Assembly and the 2008 local government elections. Both periods were seen as a time where there may be increased risk of the unlawful disposal of public records. The publication was provided to CEOs and Ministers in August 2006, days after the State election was called, and was also made available to local government CEOs and councillors prior to the 2008 local government elections.

The publication arose out of an investigation into allegations that public officials in the Brisbane City Council had illegally destroyed public records in the lead-up to the 2004 local government elections. It highlighted that even experienced and high level public officials are sometimes not familiar with their obligations under the *Public Records Act 2002*. Apart from eroding public confidence in the public sector and elected officials, ignorance of the above-mentioned Act may lead some public officials to unwittingly commit an offence by, for example, shredding public records held in a ministerial office.

Conducting workshops and information sessions

The primary objective of outreach activities is to provide an opportunity for people who would not otherwise get the chance to have direct access to us to obtain prevention advice. The programs discussed in this section allow us to provide direct and immediate advice and information on issues of importance to agency and community representatives in a structured yet informal and relaxed way.

Facing the facts workshops

Facing the facts: A CMC guide for dealing with suspected official misconduct in Queensland public sector agencies continues to be one of the most sought-after capacity building publications. Since the last three-yearly review, we have added a module for local government and updated the publication in a number of areas. We will continue to develop additional modules and updates as needs are identified both by us and our stakeholders.

Our workshops and presentations based on *Facing the Facts* cover the purpose of the *Crime and Misconduct Act 2001*, the roles of the CMC and public sector managers in embedding a strong culture of integrity, the meaning of official misconduct, the Section 38 obligation to notify the CMC of complaints, and the management and prevention of complaints. Over the last two years, 750 people from across the public sector have attended 30 workshops.

Regional Visits Program

The objective of the current program is to deliver advice and assistance to meet the needs of units of public administration within regional Queensland. The program includes visits to, and consultation with, agencies in rural and regional areas, as well as providing an opportunity for the delivery of our other training and educational activities. Each year we host four regional visits throughout Queensland. Since the program began in 2002, we have visited Cairns, Longreach, Rockhampton, Toowoomba, Logan, Bundaberg, Kingaroy, Caloundra, Charleville, Townsville, Mt Isa, Gold Coast, Stanthorpe and Warwick.

The regional visits program is very well received and attended by regional agencies. These meetings provide the agencies with opportunities to interact with us and to increase their knowledge on preventing and dealing with misconduct.

Other Seminars, Workshops and Presentations

Public sector agencies and integrity-focused professional associations within Australia, and internationally, regularly request CMC staff to participate in seminars and workshops. Our presentations on problem issues and areas are designed to assist agencies build their capacity to prevent and deal with misconduct. They also provide an opportunity for us to promote our work and role in creating an ethical public service.

Online resources

Our misconduct prevention materials are easily accessible on our website, and are some of the most popular areas visited. For example, the following pages are each downloaded more than a hundred times a month:

- ▶ *Facing the facts: A CMC guide for dealing with suspected official misconduct in Queensland public sector agencies*
- ▶ *Managing Conflicts of Interest in the Public Sector (toolkit)*
- ▶ *Fraud and corruption control: guidelines for best practice*

Meeting with chief executives, senior managers and liaison groups

The Chairperson and a senior CMC officer have a program of visiting individual Directors-General and Chief Executives to discuss matters of mutual interest. The visits focus on the joint responsibility of the CMC and the agency to develop a strong culture of integrity and reduce misconduct, and the practical implementation of that joint responsibility, such as dealing with complaints and developing and implementing prevention strategies. The importance of the partnership approach and clear and strong lines of communication is emphasised. Any emerging trends or issues are also discussed.

A point is made of visiting new appointees to these roles. In the last two years, 21 visits have occurred to public sector agencies such as the Departments of Child Safety, Employment and Industrial Relations, Primary Industries and Fisheries, Justice and Attorney-General, Health, Corrective Services, Education, Training and the Arts, Public Works, Emergency Services, Housing, Main Roads and Tourism.

Liaison Officers' Meetings

As part of our commitment to capacity-building, CMC officers participate in regular meetings with agency CMC Liaison Officers in Brisbane. CMC Liaison Officers are nominated by their agency to represent the agency in dealings with us, and to be a point of contact within their agency providing information and advice to their colleagues. Liaison Officer meetings provide opportunities for us to bring public sector agencies up to date on our activities. At the same time, they provide a forum for the free exchange of ideas and concerns between the CMC and agencies. Currently we hold 2 to 3 Liaison Officer meetings each year.

Liaison with local government

We continue our work with local government by providing specialist advice and resources in areas such as gifts and benefits, misconduct reporting systems (whistle-blowing), purchasing and procurement policies, conflict of interest and pecuniary and non-pecuniary interests, codes of conduct, fraud and corruption prevention control, ethical decision making training, and disposal of assets.

Working in this area, we seek to collaborate with Local Government Association of Queensland, Local Government Managers Australia, and the Department of Local Government Sport and Recreation.

Liaison with other integrity bodies

We have been building working partnership arrangements with anti-corruption agencies for numerous years. The primary objective is to build capacity through networks and to work cooperatively with these agencies to ensure common purpose and approach to delivering misconduct prevention messages. This includes our important work through the Corruption Prevention Network Queensland.

Australian Public Sector Anti-Corruption Conference (APSACC) 2009

The Australian Public Sector Anti-Corruption Conference (APSACC) is a joint initiative of Australia's leading anti-corruption agencies, the Independent Commission Against Corruption (NSW), the CMC and the Corruption and Crime Commission (WA). The inaugural conference was held in Sydney in 2007 and was considered to be a great success, with over 500 registered delegates and speakers from Australia and overseas. The conference will be held every two years, its venue moving between the three host states.

The next APSACC will be hosted in Brisbane at the Sofitel Hotel between 28 and 31 July 2009. Planning is well underway and a conference organiser has been engaged to assist with conference delivery. Conference participants will include public sector executives and managers, corruption prevention practitioners, policy advisors, local government and planning specialists, senior police officers, internal auditors, academics and university executive members.

As host agency, the CMC is largely responsible for the delivery of the event. The CMC Director of Research and Prevention is chairing the conference organising committee, which is currently finalising the conference program. The program will feature international and national speakers addressing topics within a range of session themes identified by APSACC delegates as being of particular relevance and interest. APSACC 2009 will also include two days of workshops on anti-corruption issues.

The APSACC 2009 will contribute to the CMC's priority of developing the capacity of agencies to prevent and deal with misconduct and corruption risks. It will also enable discussions and debate between participants about key and emerging risks to agency integrity.

Working with Indigenous communities

We continue to assist in building the capacity of Indigenous communities to minimise the incidence of fraud, financial mismanagement or misconduct through a range of strategies.

We are proactive in engaging directly with the Indigenous community through:

- ▶ Employing dedicated Indigenous Liaison Officers;
- ▶ Introducing our Liaison Officers to Indigenous community chairpersons and councillors, and reminding them of the assistance we offer;
- ▶ Attending Indigenous community regional meetings and network groups to meet with elected Indigenous council representatives;
- ▶ Advertising the CMC through social networking by attending local Indigenous community meetings to discuss our role directly with the members; and
- ▶ Our representation at NAIDOC (see further information below).

In addition to our direct activities with community members, we continue our role working with government agencies that have oversight for Indigenous matters.

We were active in facilitating the commencement of quarterly meetings attended by representatives from the Queensland Ombudsman's Office, the Queensland Audit Office, the Department of Aboriginal and Torres Strait Islander Policy, the DLGSR, and the Department of the Premier and Cabinet (Social Policy Unit). The purpose of these multi-agency meetings is to gain a clearer understanding of the issues facing Indigenous councils from a governance and integrity standpoint. The meetings share information on current projects, identify opportunities for collaboration, and ensure that communities are not confronted with an uncoordinated range of different training and capacity building initiatives.

Periodically an issue will arise requiring a 'whole of government' response, for example the amalgamation of local government. It was foreshadowed that this would necessitate the need for additional capacity building and other support initiatives. This type of response is best coordinated through meetings of dedicated agencies working collectively to ensure effective outcomes.

Code of Conduct Training for Indigenous Councils

In conjunction with the DLGSR, our Indigenous Advisers provided training to Torres Strait Island (TSI) councils, based on our publication, *On the Right Track Councillor Information Kit – A guide to Good Governance in Indigenous Councils*. This training focused on the development and implementation of a code of conduct for each council. Workshops were completed with 15 of the 18 TSI councils.

As part of the local government amalgamations, the TSI councils were amalgamated into the Torres Strait Island Regional Council. The amalgamation of the TSI councils and new operating structures for other Indigenous councils has created a need for us to continue our ongoing training and workshops in the Indigenous communities. Our Indigenous Advisers are currently establishing networks with all Indigenous councils throughout Queensland, with a view to providing training and workshops on good governance in their councils. It is envisaged that the Indigenous Advisers will begin a scheduled program of visits and workshops with Indigenous councils and community groups to continue to provide this support to the Indigenous communities.

NAIDOC

NAIDOC is celebrated each July. (The acronym was derived from the name of the original committee which organised events - National Aborigines and Islanders Day Observance Committee). Along with increasing numbers of agencies, local councils and other workplaces, we participate in celebrations of the Australia-wide recognition of the history, culture and achievements of Aboriginal and Torres Strait Islander peoples.

This event is an ideal time for us to inform Indigenous communities, irrespective of location and accessibility, of our role and responsibility in fighting crime and promoting integrity in Queensland. We promote the work of the CMC through visual aids and having information in an easily understood form.

Public sector research

Public perceptions of the Queensland public service and local government

In 2008 the CMC conducted its seventh survey of Queensland residents about their attitudes toward the Queensland public service and local government. The surveys, which the CMC has commissioned since 1991, report the experiences of the general public with the public service and local government, general perceptions of misconduct and corruption, and the public's confidence in, and willingness to participate in, complaints processes. The results of the 2008 survey will be reported in due course.

Ongoing assessment of public attitudes and perceptions is an important aspect of our monitoring function. With systematic measurement of public perceptions, we can identify the emergence of trends in the way people perceive the actions of government and take appropriate action through advice and education.

Misconduct in corrections

In late 2008 we expect to publish a research report into staff perceptions of misconduct in correctional institutions. It is based on a survey of officers' perceptions of the extent of misconduct in correctional centres, perceptions of the causes of misconduct, and the work environment of prisons. The survey, a collaboration between the CMC and Griffith University, was first conducted in 2001 and repeated in 2007. This allowed us to focus on any changes to the nature and extent of official misconduct in corrections and identify any misconduct risks.

The project identified some significant improvements in officers' perceptions of misconduct between the 2001 and the 2007 surveys, and also highlighted areas for improvement. For example, there were some enduring issues between management and custodial officers, including a perceived lack of protection from management for officers who report suspected misconduct. The report will make recommendations to Queensland Corrective Services (QCS) to improve the policies and procedures in relation to the reporting of suspected misconduct, the relationship between managers and custodial officers, and the management of longer-serving custodial officers.

Public sector whistleblowing

Along with 13 integrity-related organisations and five leading universities across Australia, we are an industry partner of *Whistling While They Work: Enhancing the theory and practice of internal witness management in public sector organisations*, a three-year collaborative research project led by Griffith University and funded by the Australian Research Council. The research comprised a number of segments, including surveys of public sector agencies and their employees, integrity agencies and their employees, identified internal witnesses and managers.

Our involvement in this project has provided us with an up-to-date, representative picture of the prevalence of whistleblowing in Queensland, as well as shed light on the ways in which managers handle internal disclosures, the institutional supports used by agencies to manage whistleblowing-related conflicts and opportunities for law reform. The comprehensiveness of the whistleblowing policies and procedures of Queensland public sector agencies, and employees' confidence in legislation, was assessed as the lowest among the jurisdictions surveyed. This suggests a need for clearer statutory requirements and oversight, which is especially timely given the anticipated changes in whistleblower protection at a Commonwealth level.

Whistleblowing advisory resources

Following the release of initial research findings from the *Whistling While They Work* project, we are now focussing our attention on building the capacity of public sector organisations to properly manage whistleblowing. In February 2008, we released an updated version of our advisory guide, *Exposing wrongdoing: A CMC guide to whistleblowing in Queensland*, and we collaborated with the Queensland Ombudsman's Office and the Office of the Public Service Commission to publish *Managing internal witnesses: A good practice checklist* in May 2008.

Our partnership with the Ombudsman and the Public Service Commission on this issue will continue. Work is under way on developing a comprehensive suite of advisory resources that will draw on the research findings of the *Whistling While They Work* project. These are due to be published in February 2009, and will target three distinct audiences:

- ▶ public officers and members of the general public who are thinking about making a public interest disclosure;

- ▶ managers who may receive a public interest disclosure; and
- ▶ public sector organisations that have statutory obligations to deal effectively with public interest disclosures and protect whistleblowers from reprisals.

Chapter 7: CMC's work with the Queensland Police Service

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

ASSESSMENTS

The total number of complaints against police³⁹ received in 2007-2008 year was 1869, compared with 1889 in 2006-2007 and 1780 in 2005-2006. The sources of complaints were discussed earlier in Chapter 5.

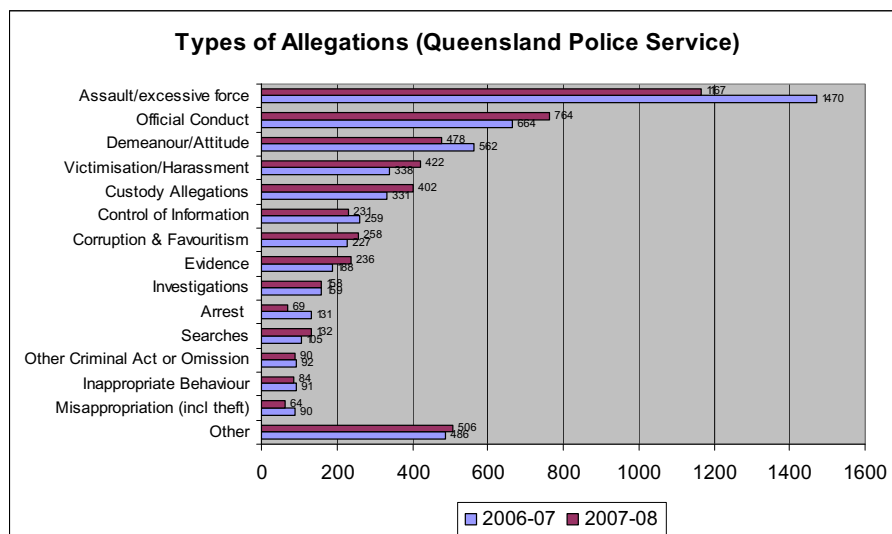
Complaints received against police involved 5061 (2007-2008) and 5193 (2006-2007) allegations against 3045 (2007-2008) and 3326 (2006-2007) subject officers. During those two years, there was a slight decline in the rate of complaints per 1000 officers.

Figure 20 shows the types of allegations that were reported in those two years. While assault/excessive force continues to account for by far the highest percentage of allegations, over the last year there has been a state-wide decline in the number of allegations in this category: 1167 in 2007-2008 and 1470 in 2006-2007, representing 23% and 28%, respectively, of all allegations received in the year. Given the role of the QPS and the nature of most contact between police and members of the public, it is not surprising that a significant percentage of allegations concern assault/excessive force. We intend to monitor whether the introduction over recent years of other use of force options, such as capsicum spray and Tasers, has any impact on the trends in relation to these allegations.

Official conduct (which includes failure to comply with statutory obligation, failure to comply with operational procedures, and improper use of discretion) is the next most significant category of allegations (764 or 15% of allegations in 2007-2008 and 664 or 13% of allegations in 2006-2007, and). Again this is not surprising given the nature of police officers' roles and functions.

³⁹ Complaints are included if they involve at least one allegation against a member of the QPS

Figure 20 Types of allegations



MONITORING

In 2006–2007 and 2007–2008 the CMC reviewed a total of 220 complaints dealt with by the QPS. For 47 of those matters (21% of the total matters reviewed), we were dissatisfied to some extent with the way in which the matters were dealt with, usually with regards to the quality of the investigation of the matters by QPS. We made recommendations to address those issues. In 7 cases, the CMC assumed responsibility for the matters.

Audits

During the last two years, we have conducted two targeted audits concerning:

- ▶ **breach of discipline complaints** – the audit focused on the appropriateness of the original classification to ensure that appropriate reporting of matters to the CMC is occurring; and
- ▶ **interwoven with court complaints** (complaints alleging assault by police, in which the complainant has been charged with assaulting police) – the audit focused on the appropriateness of the QPS assessment decision about how to deal with the complaints. Usually where the allegation raises an issue which will be specifically addressed by the court, it is appropriate to await the outcome of the court proceedings before responding to the complaint.

‘Breach of discipline’ audit

A complaint alleging a breach of discipline on the part of a police officer is not reportable to the CMC whereas a complaint alleging misconduct is. In many instances there is a blurring of the line between conduct which could constitute a ‘breach of discipline’ and that which could be ‘misconduct’ (official misconduct and police misconduct). During the audit it became apparent that there were no readily available clear guidelines to assist members of the QPS (or CMC officers) in determining when conduct could constitute a ‘breach of discipline’ as opposed to ‘misconduct’. The audit also revealed an uncertainty about reporting requirements arising from the difference between the requirements under the *Crime and Misconduct Act 2001* and those under the *Police Service Administration Act 1990*. The CMC developed guidelines for the appropriate categorisation of conduct and made recommendations in relation to the reporting requirements.

‘Interwoven with court’ audit

Similarly the CMC developed guidelines to assist the QPS to make appropriate assessment decisions about complaints involving criminal charges against the complainant.

It is expected that the recommendations will be reflected in Section 18 of the QPS Human Resource Management Manual [Complaints Management] which is being amended as part of Project Verity.

CAPACITY BUILDING AND PREVENTION

Project Verity and devolution

Project Verity, a umbrella project, is designed ultimately to enhance the culture of integrity and reduce the incidence of misconduct in the QPS. It is intended, among other things, to ensure that the QPS has a robust and effective complaints management system that deals effectively with allegations of misconduct, and in particular to ensure that the system gives full effect to the principle of devolution – managers at the appropriate local level taking responsibility - and the recommendations of the joint CJC–QPS Project Resolve (see the 2004 CMC publication *Handling complaints against police: past present and future*). The devolution of responsibility for complaints management to local level managers is not unique to Queensland. This approach is being implemented both in other jurisdictions in Australia and overseas.

Maintaining, if not increasing, public confidence in the management of complaints against police is a paramount consideration. In that regard, the CMC is alert to the concerns among some stakeholders about the notion of ‘police investigating police’. It is also important that police have confidence in a fair and timely complaints management and discipline system.

Project Verity was initially conceived as an umbrella project to review the QPS complaints-management system. As the project developed, it became clear that there was a need to break it into a number of distinct projects, including:

- ▶ A devolution project, to examine:

- the most effective way to devolve responsibility for decision-making about the handling of complaints from the ESC to appropriate levels within the police regions and commands; and
 - the appropriate monitoring regime within the QPS and by the CMC
- ▶ A disciplinary process and sanctions project, to examine aspects of the process including possible alternatives to the disciplinary hearing process, and the appropriateness of the various sanctions available within the process.

A model for the devolution of responsibility for complaints was developed and a trial of the model commenced in one police region on 1 July 2007 and is ongoing. The evaluation of the trial revealed implementation shortcomings. These issues were addressed in the implementation of a further trial in an additional region which commenced on 1 March 2008.

An evaluation of the extended trial in the second region has commenced in accordance with an evaluation plan, which has three objectives:

1. It aims to assess the implementation of the devolution model; that is, to check whether or not the concept of devolution as described in Project Verity has been put into operation as envisaged.
2. Assuming that the Project Verity devolution model was generally operating as planned, the evaluation would assess the efficacy of the model itself; in terms of quality of decision making, satisfaction on the part of those involved in the process, and timeliness
3. The effectiveness of the Administrative Consensual Disciplinary Process would be evaluated.

Surveys have been developed and will be administered to QPS managers, subject officers and complainants. A file audit has commenced and a number of issues have emerged.

CMC and ESC officers have met to discuss the issue, which resulted in a number of recommendations as to the way forward.

There will not be any further roll-out of Verity until any problems identified can be remedied and a satisfactory evaluation of the trials completed.

Project Verity is founded on the notion of the importance of QPS local level managers taking responsibility for the culture and conduct of their staff, and addressing any systemic and procedural issues.

A strategic assessment and recent misconduct operations have identified a range of possible factors contributing to a perceived 'slippage' within the Police Service. These factors include management and supervision, and performance management and the disciplinary system. The CMC does not consider that any of these factors are a bar to the implementation of Project Verity, but rather strengthen the focus on the practical implementation of the underlying principles and the need for a strong monitoring framework and prevention focus.

Complaints against police by Indigenous people

The CMC has been working with the QPS Ethical Standards Command and Cultural Advisory Unit on a project to develop culturally appropriate, timely and effective ways to deal with complaints by Indigenous people against police, and to monitor emerging trends and issues.

This Complaints Services project is directly linked to the Inquiry into Policing in Indigenous Communities, and the projects have been sharing information and other resources.

Consultation has occurred with stakeholders to discuss a variety of key issues, including community perceptions about, and understanding of, the role of the CMC, the complaints process and the handling of complaints by the CMC and the QPS; access to the complaints process; and alternative forms of dealing with complaints such as 'local level resolution'. There has been open discussion about the perceived weaknesses in the current system as well as constructive discussion of some proposals for improvement including the development of a mechanism to provide for local and timely communication about complaints and the resolution of appropriate complaints at the local level.

The consultations, analysis and review to date have confirmed a number of previously identified issues which we propose to deal with in a phased approach.

Working in partnership with the QPS and others

Representation on QPS committees and working parties

Due to the expertise that we have built up over many years, CMC representation and input is often sought on a wide range of QPS committees and working parties. These have included:

- ▶ QPS Drug and Alcohol Drug Testing Steering Committee
- ▶ QPS Police Shootings Inquest Working Party
 - Training issues sub-committee
 - Human services sub-committee
 - Critical incident review processes sub-committee
 - Mental health issues and interventions sub-committee
- ▶ QPS Taser Evaluation Working Group
- ▶ QPS Police Pursuits Evaluation Reference Group
- ▶ QPS Closed Circuit Television (CCTV) Working Party
- ▶ QPS Queensland and Torres Strait Island Police (QATSIP) Steering Committee
- ▶ QPS Ethnic Advisory Committee.

Exploring the relationship between police and young people

The CMC is currently working with The University of Queensland (UQ) and the Queensland University of Technology (QUT) to gain a greater understanding of the nature of the relationship between police and young people (15-24 years old) in Queensland.

The CMC's contribution to the project involves an analysis of relevant misconduct (CMC) and breach of discipline (QPS) complaints in an effort to identify the types of interaction that generate complaints involving young people, as well as preparing a brief research and issues paper highlighting each agency's contribution to the project. This report will be released in late 2008.

POLICE RESEARCH

The continuous improvement of the Queensland Police Service remains an important focus for Research and Prevention.

In terms of police research, our current program is divided into the following areas:

- ▶ enhancing integrity in the QPS
- ▶ evaluating the use of police powers including use of force
- ▶ reviewing police methods of operation
- ▶ monitoring police education and training.

Enhancing integrity in the QPS

Assessing public attitudes

The findings of the 2008 public attitudes survey — a survey of Queensland residents about their attitudes towards the QPS — is due to be released in June 2009. Since 1991 we have commissioned seven such surveys. Overall, these periodic studies have found that public perceptions of police behaviour remain favourable. For example, more than 80 per cent of respondents hold the belief that police are honest and behave well. In addition, dissatisfaction with police has generally shown a steady decline over the years.

Despite the generally positive view of the QPS, these surveys also highlight areas that may require more attention, such as the public's perception of police treatment of Indigenous people.

The CMC believes that these surveys provide important insights into the public's perceptions of police. Therefore, we remain committed to the ongoing assessment of public attitudes as part of our monitoring function.

Monitoring ethical standards

A summary report detailing findings from the 2007-2008 ethics surveys of police recruits and first-year constables (FYCs) has been drafted and will be sent to QPS for their information and consideration.

In addition to the summary report being prepared for the QPS, we are planning to release a major report early in 2009 that highlights any changes in the 'ethical standards' of police recruits and FYCs since the first surveys were conducted in 1995.

The CMC (and the former CJC) has been surveying police recruits and first-year constables (FYCs) about ethical standards and conduct since 1995. Over the years, a number of experienced police officers have also been surveyed.

The police ethics survey asks respondents to respond to a series of misconduct scenarios that officers may face during their careers. The survey also asks respondents to respond to a number of questions about ethics training and education, the complaints and disciplinary processes, and QPS culture and values. It is envisaged the results of the survey will provide the QPS with an assessment of the overall ethical standards of their recruits and new constables and any changes over time. These surveys are also aimed at informing decision-making about ethics training and misconduct prevention.

Surveys are now administered at both Oxley and Townsville police academies between January and June with the support of QPS staff at these locations.

Predicting police misconduct

Several years ago we began researching the potential use of early warning signs during police recruitment, selection and training processes. These signs will be used to predict the likelihood of an officer attracting a complaint to the CMC alleging police misconduct.

For this study (known as Project Barossa), we collated and examined information about police recruits who had trained in 1997 and 1998. The factors we studied included age and gender; training location; post-graduation factors such as deployment location and work activity; officers' complaint and allegation histories (CMC data) by number and type of allegation; and attrition from the Service (by a range of demographic variables such as gender, age, complaints history, etc.).

In 2008, we plan to complete the analysis and prepare a report with a view to publishing it in 2009. The CMC considers this project an important step forward in the development of an early warning system that can be used to predict police misconduct and/or early separation from the QPS.

Evaluating the use of police powers including use of force

Contributing to the development of a more restrictive police pursuits policy

Police pursuits are a difficult area of policy for police organisations because of the need to balance law enforcement with public safety.

We are currently monitoring the conduct of a QPS state-wide 'Safe Driving Policy' trial that commenced on 1 January 2008. Under the trial policy, officers were required to carefully weigh the seriousness of the offence and the benefits of any pursuit against the risks to the offender, the public or themselves prior to commencing or continuing any pursuit.

Reviewing the police use of Tasers

On 1 July 2007, the QPS commenced its 12 month trial of the use of an ‘Electro Muscular Disruption’ (EMD) device – more commonly known as Taser. For the purposes of the trial, Tasers were issued to Senior Sergeants performing the role of District Duty Officers (DDOs), and Inspectors performing the role of Regional Duty Officers (RDOs) in Brisbane (Metropolitan North and Metropolitan South Regions) and the Gold Coast (South Eastern Region). The trial has since been broadened to include all frontline police in Dutton Park Police District.

The trial of the Taser is largely a response to the increasing number of situations first-response officers are attending which require use-of-force options beyond those currently available – particularly with people who are violent, aggressive, drug- or alcohol-affected or mentally ill. A Taser is designed to incapacitate or distract an offender by transmitting an electrical current to the person’s body which causes excruciating pain, involuntary muscle contractions and the temporary loss of mobility. The current is transmitted either by placing the weapon directly against the person (‘drive stun’) or by firing two barbed electrodes into the subject’s body or clothing (‘probe deployment’). The effect of the Taser ceases as soon as the device is switched off by the officer or automatically after 5 seconds, and minimal post-care of the offender is required.

According to the QPS, research conducted overseas suggests that the introduction of Taser devices has resulted in:

- ▶ a decrease in the number of injuries to both offenders and police officers
- ▶ a lower rate of injury for officers and offenders compared to other uses of force
- ▶ fewer complaints concerning the use of force by police and
- ▶ a decrease in the use of lethal force by police.

In view of our experience conducting complex evaluations, and in recognition of our oversight role, the CMC were invited to contribute to the QPS review of Taser.

We have prepared a literature review dealing with Taser, conducted an analysis of complaints made to the CMC alleging misuse of the Taser, as well as exploring the utility of the data port audit feature of Taser. In addition to our contribution to the review, we have also played a key role in redrafting the QPS Taser policy in an effort to minimise any potential risks of misuse.

We are currently reviewing a draft of the final report prepared by the QPS.

Reviewing dog bite incidents and complaints

Conducting research into the use of police powers and the use of force by the QPS is a critically important aspect of the CMC’s monitoring function. In November 2007 we reported findings of an analysis of complaints to the CMC (and its predecessor, the CJC) about bites by QPS dogs between 1999 and 2006. The report also analysed dog bite incident data from the QPS.

The CMC made five recommendations in its final report. These recommendations relate to the use of police dogs to control crowds, the types of incidents that need to be reported, the way that bite data are collected, and how bite data should be reported.

Reviewing police methods of operation

Improving the delivery of policing services

Since the introduction of the first neighbourhood police beats in Toowoomba in 1993, the CMC has been instrumental in the development of this highly successful program. To date, we have undertaken five major evaluations of different models of beat policing, such as those located in neighbourhoods, shopping centres, existing police stations, and a major metropolitan hospital — the Princess Alexandra Hospital in Brisbane.

We continue to give assistance and advice to the QPS on the development of this program. Recently, we provided advice to Northern Police Region in relation to the establishment of a police beat on the James Cook University Campus in Townsville.

The CMC remains committed to support the efforts of the QPS to move away from a 'reactive' policing model to one that is proactive and more responsive to the community's needs. We look forward to working in partnership with the QPS in an advisory capacity to achieve that aim.

Monitoring police education and training

Providing education and training advice to the QPS

The CMC recognises the importance of police education and training and actively monitors developments in the QPS education and training area. We continue to actively support the Police Education and Advisory Council (PEAC), which was established to advise the Queensland Police Commissioner on education and training policy including:

- ▶ education and selection standards for recruits and members
- ▶ methods of teaching and assessment
- ▶ curriculum development
- ▶ the program review and evaluation process
- ▶ the development of national policies on police education
- ▶ the development of appropriate policies and strategies aimed at implementing the education and training vision of the QPS to meet the needs of all staff.

The current chair of PEAC is the Honourable Jim Thomas QC. The CMC's Chairperson, Mr Robert Needham, Commissioner Dr David Gow and the Director of Research and Prevention, Dr Margot Legosz attend PEAC regularly meetings on behalf of the CMC.

Chapter 8: Witness Protection and Operations Support

This chapter:

- ▶ explains how the Witness Protection Program operates within the CMC;
- ▶ flags some important legislative issues for the committee's attention;
- ▶ highlights the progress that has been made recently in the area of specialist training for witness protection officers;
- ▶ explains the Operations Support function at the CMC.

WITNESS PROTECTION PROGRAM

Witness protection is an essential component of the Queensland criminal justice system, because it provides an environment which assists and protects people in danger to give evidence to law enforcement agencies. The Witness Protection Unit (WPU) has maintained a 100 per cent success rate in protecting witnesses.

Successes and achievements

The Witness Protection Program offers services to people who are in need of protection because:

- ▶ they have assisted a law enforcement agency; or
- ▶ they are closely associated with a person who has provided such assistance.

Witness protection may include providing court security or close personal protection, and securing witnesses in a safe location on a temporary or permanent basis.

The following are examples of witness protection outcomes:

- ▶ The WPU assisted an interstate law enforcement agency by offering protection to a registered informant who was assisting with investigations into corrupt activities by police officers. WP officers escorted the protectee to a trial interstate where he provided crucial evidence.
- ▶ In proceedings against two defendants, close personal protection was provided to two (2) witnesses. The defendants subsequently pleaded guilty to charges including robbery and assault, and both received substantial terms of imprisonment.
- ▶ A protected witness gave evidence in relation to charges of rape and related offences. The accused was sentenced to several years' imprisonment.
- ▶ Close personal protection was provided for a witness who gave evidence against a number of defendants in relation to charges of trafficking in dangerous drugs. While one defendant is still waiting trial, others were sentenced to more than 10 years' imprisonment.
- ▶ In another matter, two protected witnesses gave evidence in a trial against one accused who was sentenced to a lengthy term of imprisonment for drug trafficking and other related offences.

- ▶ In proceedings against numerous defendants, close personal protection was provided for one witness who gave evidence in relation to serious property offences. All defendants later pleaded guilty and were sentenced to several years' imprisonment.
- ▶ A protected witness gave evidence via video link-up in relation to the attempted murder of that witness. The accused was found guilty and sentenced to sixteen (16) years' imprisonment.
- ▶ Close personal protection was provided for a witness who gave evidence against the defendant who had been charged with rape, threats, assault occasioning bodily harm, stalking and serious drug trafficking charges. The defendant was found guilty of the charges, classified as a serious violent offender and sentenced to fourteen (14) years' imprisonment.
- ▶ Close personal protection was provided for a witness who gave evidence in relation to three (3) counts of indecent dealing. The defendant pleaded guilty and was sentenced to two (2) years' imprisonment.
- ▶ Close personal protection was provided to a witness who appeared at a trial of a person charged with triple murder and one (1) count of arson. The accused was found guilty of all charges and sentenced to life imprisonment.

Witness Protection Advisory Committee

The Witness Protection Advisory Committee (WPAC) comprises:

- ▶ the Assistant Commissioner of Police;
- ▶ the Director Witness Protection and Operations Support (Chair);
- ▶ the Executive Director of the CMC;
- ▶ the Detective Superintendent, Operations Coordinator, Witness Protection and Operations Support;
- ▶ the CMC Official Solicitor; and
- ▶ the Detective Inspector, Officer in Charge, Witness Protection Unit.

The committee's primary objectives are to make assessments and provide strategic advice and recommendations to the Chairperson, who has the ultimate responsibility of administering the program, and the WPU.

The functions of the WPAC include:

- ▶ making assessments, evaluations, recommendations and directions in respect of:
 - applications for interim protection
 - applications for protection
 - applications for new identity
 - withdrawals from witness protection
 - other matters of significance relating to witness protection
- ▶ advising and making recommendations to the CMC Chairperson on issues relating to witness protection
- ▶ providing guidance and direction to the WPU
- ▶ authorising financial or other arrangements in particular instances where a protectee withdraws from witness protection.

Training

The CMC's Witness Protection Course is registered as the Advanced Diploma in Public Safety (Police – Witness Protection) through the Queensland Department of Education and Training. The course has been conducted on five occasions since 2002.

In 2004 and 2006, participants from international and interstate policing agencies as well as the Queensland Police Service (QPS), completed the four-week course. In May 2008, the course was hosted by the Australian Federal Police (AFP) in Canberra with three WPU officers attending. One WPU officer was the facilitator of the course and two WPU officers were participants. In June 2008, the WPU delivered the course to 12 QPS officers who successfully completed the qualification.

The WPU also developed a Close Personal Protection (CPP) course based on selected competencies of the Advanced Diploma which provides participants with the requisite skills to perform security duties. The courses was delivered in January and March 2008 to 12 participants from the CMC Operations Support area, thereby providing operational flexibility between Operations Support and the WPU

With its strong track record of educating and training officers, the CMC continues to be recognised as the lead agency in witness protection training, attracting international and Australasian participants.

Legislative issues

Recent legislative amendments

Since the last review, amendments to the *Witness Protection Act 2000* (the WP Act) and *Witness Protection Regulation 2001* have been enacted.

Short-term protection

The WP Act was amended to provide short-term witness protection arrangements with streamlined approval processes. Short-term witness protection arrangements are used where a person requires temporary protection for a specified period and for a specified purpose, such as giving evidence in court and other appearances.

The WP Act now contains Part 2A, 'Arrangements for short term protection'. A person on short term protection arrangements has the same rights and obligations as any other protected person within the Witness Protection Program.

Notice to produce

Amendments to s.74 of the *Crime and Misconduct Act 2001* strengthen the witness protection powers by providing for Notices to Produce to be issued for the witness protection function.

Where documents or items in the possession of a third party may assist a protected person or the integrity of the Witness Protection Program, a Notice to Produce may be issued to that third party, requiring the production of those documents, without informing the third party of the reason why the CMC seeks access to the documents.

Approved authorities

The WP Act and *Witness Protection Regulations 2001* were amended to provide for cooperation between Queensland, the Commonwealth and the other states and territories in relation to the administration of various witness protection programs operating throughout Australia.

It is important to acknowledge that it is not only witnesses who give evidence to the CMC who have access to the CMC's Witness Protection Program. The majority of protected witnesses are referred to the CMC by other law enforcement agencies, principally the QPS.

Amendments to the *Witness Protection Regulations 2001* designated Victoria's Office of Police Integrity (OPI), New South Wales Crime Commission and Police Integrity Commission (PIC), Australian Commission for Law Enforcement Integrity (ACLEI) and the Crime and Corruption Commission (CCC) of Western Australia as 'approved authorities' under the Act. The WP Act authorises the CMC to liaise with approved authorities in relation to a range of activities associated with witness protection.

Giving evidence under a new identity

Concerns were raised as to whether a protected witness who has been issued a new identity can give evidence in their previous name.

Section 27(2)(a) of the WP Act now provides that a witness with a new identity cannot be asked a question that might reveal their new identity. This would include a question which asks the witness to state their name at the commencement of giving evidence.

While leave of the Court may be obtained to ask a question of a protected person which may reveal their new identity or location, section 27A of the WP Act contains a number of safeguards which the Court must consider before granting such leave. Section 27A(8) of the WP Act provides any court who receives a disclosure certificate with the power to make any other order it considers appropriate to protect the protectee's identity or to prevent the disclosure of where the protectee lives.

While statements of witnesses prepared for the purposes of criminal proceedings do not include the new identity or current address of a witness, section 590AP of the *Criminal Code* grants the Prosecutor the right not to disclose information in relation to the location of a witness, where disclosure of that information would present a reasonably ascertainable risk to the welfare or protection of any person.

OPERATIONS SUPPORT

Operations Support (OS) incorporates three specialist areas, namely the Physical Surveillance Unit (PSU), Technical Surveillance Unit (TSU) and the Forensic Computing Unit (FCU). The units provide the necessary specialist expertise to support CMC operations and investigations.

The **Physical Surveillance Unit's** primary objectives are to gather evidence and intelligence on people who are suspected of being involved in criminal activity by the investigative and intelligence areas of the Commission. The unit also supports some operational activities of the TSU and also assists the Witness Protection Unit (WPU) to ensure the safety of persons admitted to the program.

The **Technical Surveillance Unit** provides the CMC with the capability to undertake electronic surveillance that includes audio, video and tracking in support of crime and misconduct investigations as well as support to the witness protection program.

Although the unit has a primary role of undertaking electronic surveillance functions, members also provide specialist advice and technical support to address telecommunications requirements and ensuring secure radio communications for the CMC. The unit is actively engaged in both minor and major projects such as digital migration to the hearing rooms, record of interview rooms and listening posts.

The **Forensic Computing Unit** provides the CMC with the capacity to examine data storage devices in support of crime investigations including paedophilia and public sector misconduct. The unit utilises leading forensic data capture tools to recover and extract electronic information from devices such as:

- ▶ desktop and laptop computers;
- ▶ portable storage devices;
- ▶ email servers, file servers;
- ▶ back-up tapes;
- ▶ cameras;
- ▶ personal digital assistant (PDA); and
- ▶ mobile telephones.

The unit is experiencing greater storage capacity in devices as technology advances and storage capacity becomes more affordable to the everyday user. For example, a 1000GB hard drive which can store more information than a business could in 2002 can be purchased for around two hundred dollars.

Successes and achievements

The following are examples of where units from OS have contributed significantly to the success of CMC operations:

- ▶ **Operation Cyrene.** This was a joint operation with the South Australian Police where commercial quantities of cannabis were transported from South Australia to Queensland on a fortnightly basis. Members of the PSU were required to operate in a rural and urban environment and gather evidence on the principal targets. The technical surveillance unit provided a secure communications capability for members of the PSU to operate successfully in the rural environment. At the conclusion of the operation, the FCU completed a number of examinations of mobile telephone exhibits and provided investigators with data for evidentiary and intelligence purposes.
- ▶ **Operation Navan.** This was a joint CMC/ACC/QPS investigation targeting a network of persons involved in trafficking dangerous drugs, particularly persons associated with the Ipswich chapter of the Nomads Outlaw Motor Cycle Gang (OMCG). Both PSU and TSU were utilised in this operation and were successful in gaining intelligence and electronic evidence against a number of persons for drug trafficking and money laundering offences. Members of the FCU were also involved in this operation through the examination of a number of data storage devices such as computers and mobile phones. Significant intelligence information and evidence was located and extracted from the exhibits seized.

- ▶ **Operation Proxy.** This investigation related to allegations involving the former Director-General of the Department of Education and Training. Members of the FCU were responsible for the extraction of a significant amount of sensitive data from various servers. Of the 18 computer-related exhibits there were over 1,419,275 files and one file alone contained 2,138,176 emails.

Training

Physical Surveillance Unit

Training of new staff continues to be conducted on a one-to-one basis by qualified and experienced surveillance officers. The team leaders continue to find that newly trained officers are well prepared and easily fit within an operational team at the end of the training course. Members of the unit continue to maintain their skills and knowledge base by attending recognised training programs conducted by the Queensland Police Service (QPS) and the CMC.

Technical Surveillance Unit

The unit undertakes a variety of training and attendance at relevant seminars to familiarise themselves with manufacturers new products. Although there is no recognised training course for new members of technical units in Australia, in-house training is conducted in relation to installation techniques, electrical testing procedures and the safe use of various items of plant and equipment relevant to their duties.

As a requirement for all radio frequency (RF) workers, members undertake training and recertification in pole top rescue, first aid and working at heights.

Forensic Computing Unit

Due to the rapidly advancing technology, members of the FCU maintain a close liaison with similar industry bodies and training providers to maintain pace with emerging issues. The CMC also ensures that members working in the unit, both police and civilian, receive a high level of specialist training from highly qualified trainers, enabling FCU members to give quality advice to investigators and expert evidence in any subsequent court proceedings.

Chapter 9: Public Policy

This chapter explains:

- ▶ our role in public policy
- ▶ our recent achievements
- ▶ our future directions for public policy.

Our public policy projects may arise from investigations, be referred by our Minister under section 52(1)(c) of the Crime and Misconduct Act, be required by other legislation or be internally initiated. For example, in 2007-08 we undertook a review of the public nuisance offence in accordance with the provisions of the Summary Offences Act 2005 and in 2008-09 we will undertake reviews of police move-on powers and the effectiveness of the motorbike noise provisions of the Police Powers and Responsibilities Act 2000. In recent years we have undertaken reviews into areas such as policing in Indigenous communities, prostitution and the adult entertainment industry in Queensland as a result of either legislative requirements or referrals from our Minister.

RECENT ACHIEVEMENTS

The major research initiatives undertaken in support of the CMC's public policy functions are outlined below, together with an overview of the future directions of the CMC public policy program.

Reforming child protection in Queensland

In June 2007 we released a report entitled *Reforming child protection in Queensland: a review of the implementation of recommendations contained in the CMC's Protecting Children report*. That report had its origins in the CMC's Foster Care Inquiry held in 2003, which unearthed major problems with Queensland's capacity to respond to child protection issues.

Our inquiry report *Protecting Children* was released in January 2004. It made 110 recommendations aimed at providing better services and enhanced outcomes for children in care and an improved whole of government response to child protection issues. In particular, we recommended the immediate and substantial reform of the child protection system in Queensland, including the creation of a new Department of Child Safety. Government endorsed those recommendations in their entirety and set out a strategy within a Blueprint for implementing the CMC's recommendations and the recommendations from the independent audit of foster carers.

Recommendation 9.4 of the Protecting Children report recommended:

... that the government review, and report to the CMC on, the implementation of this report's recommendations within two years from the delivery of the report.

The 2007 report concluded that significant progress had been made in implementing the CMC's recommendations but that more work needed to be done to keep pace with community expectations about how Queensland's child protection system should operate. It highlighted areas where further resources needed to be invested to achieve these goals.

Regulating outcall prostitution: Should legal outcall prostitution services be extended to licensed brothels and independent escort agencies?

In October 2006 we tabled a public report, *Regulating outcall prostitution: Should legal outcall prostitution services be extended to licensed brothels and independent escort agencies?* pursuant to section 141(4) of the Prostitution Act 1999.

The report was an extension of a previous review of the Prostitution Act undertaken in 2004. In essence we recommended that outcall prostitution services from licensed brothels and independent escort agencies should not be legalised in Queensland, as well as recommending significant changes to safety options for sole operators. The report also outlined a multi-pronged approach for attacking illegal prostitution in Queensland. On 13 October 2008 the Government announced its intention to support all 23 recommendations contained in the report.

Review of the Implementation of the Recommendations of the Seeking Justice Report

The CMC's report *How the Criminal Justice System Handles Allegations of Sexual Abuse: A review of the implementation of the recommendations of the Seeking Justice report* was released in March 2008.

Seeking Justice: An inquiry into the handling of sexual offences by the criminal justice system (June 2003) advocated changes to various issues and processes relating to the handling of sexual offences by the Queensland Police Service (QPS) and the Queensland Office of the Director of Public Prosecutions (ODPP). These included the collection and dissemination of evidence, the stress associated with the criminal justice process for victims and the accused, and community confidence in the fairness and objectivity of the process.

Our 2008 report concluded that good progress had been made in implementing most of the recommendations in the Seeking Justice report. In particular, it found that the QPS had made significant inroads into the implementation of reforms to improve the handling of sexual offences by the criminal justice system. In contrast, while the ODPP was described as also having made some progress in implementing the recommendations, the CMC review demonstrated that the agency still had significant work to do in certain areas.

The report recommended that the ODPP and the QPS cooperate more closely in the handling of sexual offences, improve staff training in handling these sensitive matters, and periodically report their progress in this area to their respective ministers. The CMC intends to monitor progress towards the achievement of these recommendations.

QPS Review of the Police Powers and Responsibilities Act 2000

On 5 May 2007, the Police Minister announced the five-yearly review of the *PPR Act*. The aim of the review is to ensure that police powers are 'adequate and sufficient' for QPS officers to carry out their responsibilities, and also appropriate for members of the community.

The review will be conducted in three stages. The first stage, which has already commenced, invites QPS officers to identify any areas of the legislation that could be improved. The second stage involves establishing a formal Committee to examine any suggestions or recommendations made by QPS officers, and to take further submissions from the public. It is envisaged the review Committee will comprise representatives of the legal profession, the Civil Liberties Council and the CMC. In the final stage of the review, the Committee will evaluate all recommendations made to it and present these findings to the Minister for consideration by Government.

We expect that the composition of the committee will be announced later in the year however it is known that the CMC will be represented on that committee. The review will be finalised in late 2009.

Reviewing the 'evade police' offence

The Police Powers and Responsibilities and Other Acts Amendment Act 2006 also amended the PPR Act to insert a new Chapter 11A, which contains provisions about evading police officers. The purposes of the new Chapter 11A are threefold and are to:

- (a) provide for an offence called an evasion offence;
 - (b) make particular provision to help police officers in the investigation of evasion offences;
 - (c) enable a court to order the impoundment or forfeiture of a motor vehicle after the court finds the driver of a motor vehicle guilty of an evasion offence.
- Section 443ZZM directs that the CMC review the use by police officers of powers under this chapter and prepare a report on the review.

We are required to commence the review as soon as practicable after 30 June 2009.

Review of the off-road motorbike noise provisions

On 1 July 2006 the *PPRA (Motorbike Noise) Amendment Act 2005* commenced. It is based on pre-existing anti-noise on-road motor vehicle legislation and provides police with the power to act on a complaint about off-road motorbike noise and make a series of graduated responses from issuing a noise abatement direction through to seizing motorbikes.

Section 808 of the PPRA requires that the CMC undertake a review of the *PPRA (Motorbike Noise) Amendment Act 2005* one year after implementation. The review is well under way, with a discussion paper released in June 2008. Our call for public comment has attracted substantial community attention, with over 400 submissions received to date. Submissions have highlighted the significant impact off-road motorbike riding has in the community, particularly in areas of health and well-being of persons affected by excessive noise.

We envisage that the review will be finalised by early 2009. We will make recommendations to improve the police and other responses to the issue of off-road motorbike riding in the community.

Policing Public Order: a review of the public nuisance offence

In May 2008 the CMC tabled in parliament its review the use of the public nuisance offence in Queensland (s. 7AA of the *Vagrants, Gaming and Other Offences Act 1931* and s. 7 of the *Summary Offences Act 2005*).

The picture that emerged from our review should alleviate many of the concerns that had been expressed about the public nuisance offence. We found that the new offence had not led to an increase in the over-representation of disadvantaged people and over-use of the provision as some people had feared. We concluded that, on balance, the public nuisance laws were being used fairly and effectively in the sense that police are taking action to respond to growing community concerns about anti-social behaviour, especially where alcohol is involved.

However, our review acknowledges that the public nuisance offence is a highly discretionary tool, and so made a number of recommendations to improve areas of concern. For example, we recommended changes to the legislation so that the use of the public nuisance offence for offensive language can be monitored in accordance with recommendations from the Royal Commission into Aboriginal Deaths in Custody.

Other recommendations included:

- ▶ a separate offence of public urination
- ▶ the QPS reinforce the message that de-escalation and prevention are guiding principles when dealing with public nuisance offences
- ▶ ‘ticketing’ be introduced as another option available to police to deal with public nuisance behaviour.

On 10 August 2008, the Premier and the Minister for Police, Corrective Services and Sport publicly announced that the government would implement our recommendations and in particular, that in 2009 there would be a trial of ticketing and that a new offence of public urination would be created.

Reviewing police ‘move-on’ powers

On 1 June 2006, Queensland’s *Police Powers and Responsibilities and Other Acts Amendment Act 2006* came into force. Among other amendments, the Act expanded the police move-on powers. In particular, the amendment extended the move-on power to include any public or prescribed place, and inserted a requirement that the CMC review the use of the power by police. We are required to commence this review as soon as practicable after 31 December 2007.

Parliamentary debates indicate varied and significant concerns about the use of police move on powers in Queensland, including unease regarding the operation of such highly discretionary provisions and their possible effect upon minority groups. The just and effective policing of public space and public order, and the balancing of competing rights of groups and individuals to meet in, and use, public areas without fear or harassment, is of significant relevance to the entire Queensland community.

We are currently in phase one of the review, with an issues paper to be finalised shortly calling for public comment. Data will be collected and analysed in the coming months and key stakeholder consultations will be undertaken.

We are aiming to table this report in Parliament prior to December 2009.

Review of the Child Protection (Offender Prohibition Order) Act 2008

The *Child Protection (Offender Prohibition Order) Act 2008* commenced 2 June 2008. This Act provides for the protection of the lives of children and for their sexual safety by providing the courts with the power to make orders prohibiting particular sexual offenders from engaging in conduct posing a risk to the lives or sexual safety of children. The applicability of this legislation is to persons who have been convicted of a relevant sexual offence against a child and have engaged in concerning conduct. This Act also seeks to capture sexual offenders who do not fall under the immediate jurisdiction of the *Child Protection (Offender Reporting) Act 2004*.

Section 60 of the *Child Protection (Offender Prohibition Order) Act 2008* requires the CMC to review the operation of this Act and prepare a report. The review must be started as soon as practicable five years after the commencement of the Act.

Inquiry into policing Indigenous communities

1 February 2007 the CMC received a referral from the Attorney-General and Minister for Justice asking the CMC to examine policing in Aboriginal communities living on deed of grant in trust (DOGIT) areas. After seeking clarification about aspects of the referral, the CMC received revised terms of reference on 6 March 2007. The CMC is to examine and make recommendations to the Government with respect to:

- ▶ Possible changes to existing police policy and procedures that would result in improved relations between the Queensland Police Service (QPS) and Aboriginal DOGIT communities and Torres Strait Island communities (referred to in the following as ‘the Indigenous communities’);
- ▶ Current practices relating to detention in police custody in remote communities including the monitoring of detainees in watch houses and other police facilities in the Indigenous communities and the possible involvement of community justice groups or other civilians in the monitoring of detainees; and
- ▶ The optimal use of existing and future State resources available to deliver criminal justice services in the Indigenous communities.

The CMC was asked in carrying out the inquiry to consult with relevant stakeholders, including the QPS, the Queensland Police Union of Employees, the Queensland Police Commissioned Officers Union, the mayors and councils of Aboriginal and Torres Strait Island communities, and Community Justice Groups. The CMC inquiry team travelled to all the Aboriginal DOGIT communities and to the Torres Strait and consulted with councils, justice groups, community members, police and other groups. Consultations were also carried out with senior police and service delivery agencies in regional centres and Brisbane. The CMC published an issues paper in April 2007, called for public submissions to assist the inquiry and held a public forum in Cairns on 16 October 2007.

At the end of 2007 the CMC received data from the QPS on offences, offenders, crime victims and police staffing in the Indigenous communities. Data on prisoners in police detention were received in February 2008. However, the inquiry team found that the detention data did not provide accurate information on prisoners in watch houses. As this information was critical to the inquiry's ability to address its second term of reference, alternative sources of detention information were considered by the QPS, which advised that available sources could not provide reliable information. To overcome this problem, the CMC requested access to a sample of Cape York watch house custody register books, which record information on each prisoner admitted to a watch house cell. After some negotiation, the sample of registers was received at the end of April 2008. Compilation and analysis of the register data took some time, but was completed in September 2008. The registers provided very valuable information not previously available in Queensland.

The inquiry was a complex project conducted in the context of continually evolving policy and service delivery initiatives at state and federal level.

As at October 2008 the inquiry report is in preparation. Discussions with selected stakeholders on aspects of the draft report are currently under way. The inquiry report is due to be completed in coming months. It is expected that it will make a significant contribution to criminal justice policy development and policing practices and priorities, and ultimately improve community safety and public order in remote Indigenous communities.

FUTURE DIRECTIONS

Issues with timeliness

Several recent projects have experienced difficulties that have prevented their on-time completion, the project on Indigenous policing in particular. That latter project, beyond those data collection problems already mentioned, had its project timeframe adversely affected by significant staffing issues. Those staffing issues involved Inquiry team members being diverted to assist completion of the CMC report on public nuisance laws, which was published in May 2008. Also, sadly, one team member passed away in early 2008. Other team members have suffered serious illness during 2008.

Timeliness generally is also affected by the sometimes unexpected appearance of the referral, often one addressing a topic of complexity. Responding to the referral may require locating resources or re-directing staff devoted to other matters of priority while at the same time ensuring productivity is maintained in other areas of core activity.

The organisation has taken a number of steps to address timeliness issues by improving our project management skills and by integrating projects to prevent replication. The matter of the disruption created by unexpected referrals has also been the subject of discussion between the Chairperson and the Minister. Further consultations on this topic may occur and result in the CMC better accommodating referrals and having prior notice of them to allow input on resources and timeframes.

Integrated work program

A key component of our future direction for research and prevention will be the development of research and prevention work agendas that integrate projects with similar goals and themes across disciplines and CMC divisions. An example of this would be planning research into the causes of police misconduct to coincide with research into police ethics.

Where possible, we hope to integrate new government legislative review agendas into similar existing work agendas. For example, current work on criminal paedophilia research will be mindful of other child sexual offence research and legislative reviews.

As part of our forward planning process we hope to develop ways to collect data for follow-ups of previous reviews that ‘piggy back’ on data collection processes for new reviews and on projects being undertaken by external stakeholders.

The Research and Prevention plan is to utilise clusters of expert knowledge across divisions resulting in already acquired knowledge platforms being utilised in areas of most need. Such sharing of knowledge prevents duplicated reading, learning, and planning thus enabling improved timeframes, the construction of robust research design across divisions, and our CMC resources being used more proactively and effectively.

Chapter 10: Accountability and corporate governance

The CMC's accountability and corporate governance infrastructure is founded on principles of integrity, accountability, excellence and innovation. The infrastructure helps the CMC achieve best practice in the planning, management and monitoring of its operations, performance and internal controls.

EXTERNAL ACCOUNTABILITY

Although the CMC is an independent statutory body separate from the government of the day, it is accountable for its actions through a variety of mechanisms, the principal one being the PCMC.

The PCMC

The PCMC is a seven-member, all-party committee of the Queensland Legislative Assembly established to:

- ▶ monitor and review the performance of the CMC;
- ▶ review CMC reports, including the annual report and research reports;
- ▶ request reports on matters that have come to the CMC's attention through the media or by other means;
- ▶ receive and consider complaints against the CMC, and deal with issues concerning the CMC as they arise.

The Commission formally meets with the PCMC on a regular basis (usually every two months) to discuss current activities and performance. A comprehensive report, which details the CMC's activities during the reporting period, is prepared for the PCMC in advance of these meetings.

Other

Parliamentary Crime and Misconduct Commissioner

The Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) assists the PCMC in its role of monitoring and reviewing the CMC.

The Parliamentary Commissioner, at the PCMC's direction, investigates complaints against the CMC or its officers, and conducts audits and reviews of the CMC's activities. The Parliamentary Commissioner's powers include the ability to require CMC officers to give evidence at a hearing, and to require the production of records, files and other documents.

The PCMC may also direct the Parliamentary Commissioner to audit and review the CMC's activities. Each year the Parliamentary Commissioner submits an audit of the CMC to the PCMC.

The minister

The minister responsible for the CMC is the Honourable Kerry Shine MP, Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland. To assist the minister in this regard, the CMC reports on the efficiency, effectiveness and timeliness of its operations every six months through a written report under section 260 of the CM Act.

The minister participates in the selection of the Chairperson, Commissioners and Assistant Commissioners, approves staff remuneration conditions and approves the CMC's budget. Also, the legislation requires the minister to ensure that the CMC operates in accordance with best-practice standards.

Crime Reference Committee

The Crime Reference Committee, established under section 274 of the CM Act, has responsibility for referring major crime to the CMC for investigation. It also has a coordinating role for investigations into major crime conducted by the CMC in cooperation with any law enforcement agency.

The committee is chaired by the Assistant Commissioner, Crime, and consists of the Chairperson of the CMC, the Commissioner of Police, the Commissioner for Children and Young and People and Child Guardian, and two community representatives.

Public Interest Monitor

The Public Interest Monitor monitors applications for, and the use of, surveillance warrants and covert search warrants under the CM Act and the PPRA.

The Public Interest Monitor has the following functions for surveillance warrants and covert search warrants:

- ▶ to monitor compliance by the CMC in relation to matters concerning applications for surveillance warrants and covert search warrants;
- ▶ to appear at any hearing of an application to a Supreme Court judge or magistrate for a surveillance warrant or covert search warrant, or to test the validity of the application;
- ▶ to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants;
- ▶ whenever it is considered appropriate, to give to the Commission a report on non-compliance by the CMC.

Supreme Court

Many of the CMC's coercive powers may be exercised only with the approval of a Supreme Court judge. These include:

- ▶ a search warrant (where structural damage may occur);
- ▶ a covert search warrant;
- ▶ a surveillance warrant;
- ▶ a notice requiring immediate attendance at a hearing;
- ▶ monitoring and suspension orders on financial institutions;

- ▶ an arrest warrant for non-attendance;
- ▶ an additional powers warrant.

The CMC is also subject to review in the Supreme Court in the following cases:

- ▶ A person who believes that they are being investigated unfairly by the CMC may apply to the Supreme Court for relief.
- ▶ The Supreme Court may decide issues of privilege raised by a person under investigation either at first instance or by reviewing a decision made by a presiding officer at a CMC hearing.

Please refer to Chapter 2 for information on Supreme Court cases.

Controlled Operations Committee

The Controlled Operations Committee was established under the PPRA to consider and make recommendations about applications for ‘controlled operations’ to be undertaken by the QPS or the CMC. Controlled operations are investigations of serious indictable offences, misconduct or organised crime that involve police officers and others engaging in activities that may be unlawful.

The committee, chaired by a retired District Court judge (the independent member), comprises the Commissioner of Police (or nominee) and the Chairperson of the CMC.

In the case of any controlled operation by the CMC that involves the investigation of a police officer, the Chairperson may approve the application without referring it to the Committee, but must first contact the independent member and obtain the member’s agreement to the proposed operation.

INTERNAL ACCOUNTABILITY

The Commission

The CMC is headed by a five-member Commission comprising the Chairperson and four part-time Commissioners who represent the community. The Commission has primary responsibility for achieving the purposes of the CM Act.

Each fortnight the Commission meets formally to consider issues relating primarily to the strategic direction of the organisation. In guiding and maintaining the focus of the organisation, it discusses matters affecting all areas of the organisation including financial, staffing and managerial issues; specific crime and misconduct operations; research and intelligence projects; and capacity development and misconduct prevention activities. A typical agenda includes:

- ▶ strategic examination of the work of the various functional areas;
- ▶ discussion about the status and progressive outcomes of key projects;
- ▶ consideration of whether matters should be referred for prosecution or disciplinary action;
- ▶ consideration of any managerial or risk issues.

Current CMC Commissioners

The current Commissioners of the CMC are: Mr Robert Needham (Chairperson), Dr David Gow, Ms Ann Gummow and Mrs Judith Bell. There is currently one existing vacancy on the Commission, and it is anticipated that this will be filled shortly.

Mr Robert Needham (Chairperson)

Mr Needham, who has a Bachelor of Laws from The University of Queensland, was appointed to the position of Chairperson in January 2005. Before then he practised as a barrister for 35 years. His career includes periods as a Crown Prosecutor and a barrister in private practice.

In late 1987 Mr Needham was appointed Counsel Assisting the Fitzgerald Commission of Inquiry. He subsequently became involved in the political corruption investigations arising out of the inquiry, forming a team in the Special Prosecutor's Office to finalise briefs and prosecute the corruption trials.

Afterwards, Mr Needham was involved in various corporation law prosecutions for the Australian Securities and Investment Commission and the Commonwealth Director of Public Prosecutions. He was also involved in complex and lengthy cases in the Land Court and the Planning and Environment Court.

Mr Needham was the Parliamentary Crime and Misconduct Commissioner from 2002 to 2004.

Dr David Gow

Dr David Gow is currently a senior lecturer at The University of Queensland Business School. He is an Honours graduate from the University of Sydney and received his PhD from the University of Hawaii in 1981.

Dr Gow's main expertise is in public administration and political science, in which he has held various academic appointments over the past 25 years. He also has considerable experience in research methodology, having worked extensively as a consultant to the Queensland Government, and to the CJC between 1991 and 2000.

Ms Ann Gummow

Ms Gummow has a Bachelor of Laws from the University of Queensland and a Graduate Diploma in Legal Practice from the Queensland University of Technology. She was admitted as a solicitor in 1983 and fulfils the requirement that one of the CMC's part-time commissioners must be a practicing lawyer with a proven commitment to civil liberties.

Since 1990 Ms Gummow has worked at the Women's Legal Service in community legal education, community development and contributed to legal reform. Prior to that, she was a solicitor in private practice. At other times Ms Gummow has contributed in teaching teams offering learning activities in social work, social policy, justice studies and law at various Queensland universities.

Mrs Judith Bell

Mrs Bell has a Diploma in Teaching, a Bachelor of Education Studies and a Bachelor of Arts majoring in Aboriginal and Torres Strait Islander Studies. She has extensive experience and knowledge of the public sector and child welfare, with more than 30 years experience as a teacher in Queensland and the United Kingdom.

She is on the Board of Trustees for the Brisbane Grammar School, as well as a member of the University of Queensland's Senate. Mrs Bell is also a former member of the CMC's Crime Reference Committee.

The Executive Committee

The role of the Executive Committee (EC), formerly known as the Strategic Management Group, is to manage the organisation with the delegated authority and strategic direction established by the Commission. The EC meets fortnightly to select and oversee the major operational and administrative projects undertaken by the organisation in line with corporate objectives, priorities, and statutory responsibilities.

The EC is led by the Chairperson and comprises 11 additional members, representing the following areas: Crime, Crime Operations, Financial Investigations, Misconduct, Misconduct Investigations, Complaints, Research and Prevention, Intelligence, Witness Protection and Operations Support, Information Management, and Corporate Support.

Management committees

The CMC has a comprehensive committee structure to ensure that it manages its operations, performance and internal controls, while achieving best practice.

The committees currently in operation are:

Audit Committee: provides independent advice to the Commission on determining potential risks to the CMC and where audit focus should be directed.

Commission Consultative Committee: provides a discussion forum where employees and senior management can exchange ideas, concerns and points of view.

Equal Employment Opportunity Consultative Committee: provides advice to management in relation to discrimination and EEO matters, and provides a forum where staff can raise matters of interest and concern.

Finance Committee: provides high-level advice and expertise with budget matters and ensures that appropriate and effective financial management practices in place.

Information Steering Committee: provides advice concerning the development of the CMC's information systems strategy and infrastructure.

Risk Management Committee: ensure that the CMC maintains appropriate risk minimisation strategies through monitoring and advice.

Workplace Health and Safety Committee: monitors the CMC's performance in providing a safe and healthy environment for its employees.

Workforce Management Committee: ensures the strategic human resource management needs of the CMC are effectively addressed.

Other committees: there are six committees that deal specifically with operational matters: the Misconduct Operations Review Committee, the Misconduct Assessment Committee, the Misconduct Activities and Projects Committee, the Crime Operational Review Committee, the Crime Intelligence Research Review Committee and the Witness Protection Advisory Committee.

Internal audit

The CMC has a part-time Internal Auditor who is administratively responsible to the Executive Director and reports directly to the Chairperson through the Audit Committee. This independent audit function is an integral part of the CMC's corporate governance framework, and its activities are monitored by the Audit Committee. Its role is to conduct independent audits to help management achieve sound managerial control. Where necessary, additional external resources are used to ensure there is effective or specialist audit coverage.

The Internal Auditor acts independently of the Audit Committee but has a standing invitation to attend committee meetings. The Internal Auditor undertakes regular appraisals, offering independent confidential advice on action to improve the efficiency and effectiveness of the CMC, contributing to the integrity of the annual financial statements, monitoring actions taken by line management on recommendations reported to the Chairperson, and providing advice to management on governance, management and accounting matters.

Financial management and performance management

The CMC operates in an accrual output-based financial management framework, where senior managers are responsible and accountable for the achievement of corporate goals and objectives within approved budget allocations.

The CMC reports on its performance through:

- ▶ the annual Service Delivery Statements (SDS);
- ▶ financial statements for inclusion in the annual report;
- ▶ an internal budget reporting regime;
- ▶ fortnightly Commission meetings;
- ▶ regular meetings with the PCMC;
- ▶ six-monthly reports to the Minister.

The CMC reports on its operational performance through qualitative reports and statistical information. Narrative reports on the success of investigations and projects are provided through the annual report, other publications and the website. Statistical information about our activities can be found in the annual report. Operational performance targets are reported to the minister and Queensland Treasury through the SDS (part of the State Budget Papers). These include a range of measures relating to aspects of quantity, quality, timeliness and cost. Performance reports are also regularly provided to the Queensland Treasury.

Legislative compliance

The Commission and operational areas of the CMC receive independent legal advice from the Legal Services Unit on varied topics, including administrative and criminal law, contracts, personal injuries litigation and statutory interpretation. This unit consists of General Counsel, the Official Solicitor, the Freedom of Information Coordinator and a legal officer.

General Counsel

The role of General Counsel is to:

- ▶ provide independent legal advice to the Chairperson, Commissioners and senior officers in the administrative and operational areas of the Commission;
- ▶ represent the Commission before courts and tribunals and presiding at in-house investigative hearings;
- ▶ represent the Commission on various intergovernmental and interdepartmental committees and working groups, including groups examining new cross-border investigations legislation, whistleblower protection legislation, and the legislation governing telecommunications interception;
- ▶ liaise with state government departments about amendments required to the CM Act and other legislation, to ensure the continued effective operations of the CMC.

Legal Services Unit

The Legal Services Unit:

- ▶ represents the Commission in litigation before any court or tribunal;
- ▶ engages and instructs external counsel or solicitors to represent the Commission before any court or tribunal, when appropriate;
- ▶ provides independent and objective legal advice to the Commission and its officers;
- ▶ determines applications for access to Commission documents made under the *Freedom of Information Act 1992* (FOI Act);
- ▶ handles matters concerning the privacy regime;
- ▶ creates and maintains a legal advice database, and oversees continuing education for Commission lawyers.

Freedom of information

The CMC is subject to the FOI Act, which means members of the public are entitled to apply for access to our documents under that Act.

However, the *Freedom of Information and Other Legislation Amendment Act 2005* introduced a new exemption provision that limits access. Information obtained, used or prepared for an investigation by the CMC or another agency where the investigation is in performance of the CMC's crime and misconduct functions, is exempt from FOI. It also applies to the same information obtained and related to its predecessors, the CJC and the QCC, in the performance of equivalent functions. The exemption does not apply if a person seeks information about themselves and the investigation has been finalised.

The exemption is considered necessary to ensure that the CMC can protect public sector employees when voluntarily assisting us in the course of an investigation. It ensures that the CMC remains effective and provides employees who cooperate with its investigations the confidence to work with the CMC. This approach is preferable to invoking coercive powers in order to efficiently conduct our investigations, and for a higher quality outcome.

We endorse the view of the FOI Independent Review Panel chaired by Dr David Solomon AM, and the recommendations in its report handed down in June 2008 that there be no change to this provision.

Privacy legislation

Since 2001, when Cabinet approved Information Standard 42, agencies have been required to review the way they handle personal information to ensure that they comply with the requirements of the 11 Information Privacy Principles (IPPs). The CMC is exempt from IPPs 2, 3, 9, 10 and 11 for all functions except administrative matters. As a result, most of the CMC's core activities are excluded from the privacy scheme. In accordance with the requirements of Information Standard 42, the CMC has nominated a privacy contact officer, developed a privacy plan to give effect to the IPPs and published the plan on its website.

Charter of Service

The CMC's Charter of Service sets out the standards that we undertake to meet when dealing with complaints about misconduct in the Queensland public sector. The charter explains the services complainants can expect from us and their recourse if this service is not received.

Security

The CMC's security services primary objective is to afford the best protection to staff, information, assets and corporate reputation. This is achieved through a range of layers identified by a security risk management process. These include the provision of protective security measures (including 24/7 physical security), investigative capacity and an in house vetting service. Security Services forms part of the Intelligence Business Unit and works closely with various units, such as Information Retrieval Section and Intelligence Analysts, integral to the performance of this service.

The relocation of the CMC to Green's Square has provided an opportunity to review our security structure, services and technology. A new system has been specified and developed as a result of staff consultation, specific security risk assessment and experience. There have been significant design advantages in implementing this system during an integrated fitout. The in house vetting service not only provides the capacity to conduct security vetting for CMC staff, contractors and visitors but also provides a probity vetting service to Queensland and national law enforcement and government agencies. Since April 2006 security completed 622 probity checks on behalf of other agencies. In addition to this, 1,308 staff vetting checks were completed. This includes CMC staff being fully re-vetted on two occasions since April 2006

Operational Support (Information retrieval)

The CMC's Information Retrieval Section (IRS) continues to provide centralised and specialised support to the CMC's operational activities. This is achieved through being the liaison point for retrieval of data from national and state law enforcement agencies, telecommunication companies, and other Government and non-Government agencies.

The IRS provides a service to various areas of the CMC including Crime, Misconduct, Proceeds of Crime, SIU, Witness Protection and Security.

Since April 2006, the IRS has undertaken 6,445 requests for information involving 116,384 searches.

Resource management

Human resources

The CMC is dedicated to providing the best possible working environment for its staff of lawyers, police, accountants, investigators, intelligence analysts, social scientists, computing specialists, communication specialists, administrators and support officers, on the basis that a happier workforce is also a more stable and productive one.

It does this by offering working conditions similar to those of the state public service, and through effective equal employment opportunity, anti-discrimination and workplace health and safety standards. In addition, it provides an employee support program, various training options, and formal mechanisms for staff to discuss concerns with senior management.

Organisational restructures

Two significant organisation restructures have taken place since 2006, in the Complaints Services section of Misconduct and the other in Research and Prevention.

The restructure of the Complaints Services Section was the culmination of a significant internal review of the effectiveness of complaints management procedures and the adequacy of resources assigned to those activities. The revised structure became effective on 1 July 2006.

In late 2006, the Mercer Group was engaged to independently review the organisational structure of Research and Prevention. It recommended an amended structure that would enable improved management over the allocation of resources to project teams. The revised structure became effective on 1 July 2007.

In addition, further financial investigative resources have been allocated to the Proceeds of Crime Team to assist it to cope with increasing demands placed on this area.

Organisational Climate Survey

In 2007 the CMC conducted its second organisational climate survey to provide staff with an opportunity to voice their opinions and thoughts about the organisation.

To provide more detailed advice on some aspects of the survey, an independent review of the CMC's total employment offering was undertaken to identify staff views on:

- ▶ Remuneration (e.g. base pay, performance pay, recognition);
- ▶ Benefits (e.g. superannuation, salary packaging);
- ▶ Career (e.g. training and development, learning opportunities);
- ▶ Management (e.g. style, communication, decision making);
- ▶ Conditions (e.g. workload, work/life balance).

The outcomes of both the organisational climate survey and the review of the CMC's total employment offering have been incorporated into the CMC's Workforce Management Plan 2007–2009.

Workforce management planning

The Workforce Management Plan 2007–2009 sets out the framework for a range of strategies focusing on:

- ▶ attracting, engaging and retaining experienced staff;
- ▶ organisational capability;
- ▶ managing a multi-generational workforce;
- ▶ strengthening management and supervisory practice at all levels of the organisation.

A workforce management committee (headed by the Chairperson of the CMC) meets regularly to consider proposals developed by the workforce management team.

The following strategies have been completed during 2008:

- ▶ Implementation of a mentoring program;
- ▶ Structured work unit induction programs;
- ▶ Review of recruitment and selection procedures;
- ▶ Review of study assistance arrangements;
- ▶ Introduction of an organisational contribution to membership fees of professional organisations;
- ▶ Review of recognition and reward practices;
- ▶ Implementation of an enhanced performance management process;
- ▶ Review of the employee assistance program.

Development of the following strategies has commenced:

- ▶ Review of working hours arrangements;
- ▶ Staff rotation and enhanced mobility processes;
- ▶ Leadership and management development programs;
- ▶ Phased retirement framework.

Major strategies still to commence include:

- ▶ Succession planning;
- ▶ Talent identification and management;
- ▶ Development of effective career paths;
- ▶ Further development programs aimed at staff within specific disciplines;
- ▶ Corporate health/well-being program.

Work, Family and Life Balance Program

The CMC's Work, Family and Life Balance Program incorporates flexible working hours, leave provisions (including purchased leave), employment arrangements (including part-time employment and job-sharing arrangements), and the maintenance of a workplace culture that supports employees in balancing their work and family and other responsibilities.

Staff training

Management Essentials Program

This program is targeted at AO5/PO3 to AO8/PO6 level staff and involves completion of a number of competency-based workshops, aimed at providing participants who successfully complete all assessment requirements with a Diploma of Government (Management). This 12 month program was delivered between May 2006 and February 2007, and 35 employees graduated with that qualification.

The continuation of this program is under consideration, and is included as a strategy in the Workforce Management plan 2007-2009.

Other Accredited Training

The Crime and Misconduct Commission Certified Agreement 2006 provides an opportunity for staff at the AO2 to AO4 levels to study towards an accredited qualification at the Certificate IV (AO2), Diploma (AO3) or Advanced Diploma (AO4) level at no cost to the employee.

The first program was aimed at providing participants who successfully complete all assessment requirements with a Certificate IV in Government. This program was delivered at a number of competency-based workshops between May 2006 and March 2007, and 14 employees graduated with that qualification.

A second program commenced in June 2008 with 12 participants working towards achievement of a Certificate IV in Government.

Twelve graduates from the first program commenced an intensive diploma upgrade program, which was delivered between September 2007 and March 2008. Four staff have completed this program and have been awarded a Diploma of Government, while others are continuing with their assessments.

Other staff training

Staff continue to attend conferences, seminars and other training activities aimed at addressing business priorities and specifically identified needs.

Internship program

The CMC provides opportunities for final-year law students at the Queensland University of Technology to work at the CMC for one day per week for 12 weeks as part of their final year of study.

Staff accountability

The CM Act requires the Chairperson to report to the PCMC if the Chairperson suspects a CMC officer has acted in a way that involves or may involve improper conduct (s.329). The CM Act also provides for a wider definition of CMC officers, by including former officers, and specifically allows the PCMC to request reports in respect of these matters.

STRATEGIC DIRECTIONS REVIEW

In November 2007, the CMC's Commissioners completed a review of the CMC's governance framework to clarify the roles of key internal stakeholders and to implement an updated formal policy in dealing with governance matters.

As part of this review, the Commission decided to conduct a Strategic Directions Review, the intention being to provide a basis for the Strategic Plan for 2009-13.

The aim of this review is to ensure that the CMC's strategy reflects priorities and effectively addresses contemporary and likely challenges. The review, still underway, will provide an opportunity for a thorough examination of the CMC's position and direction, and allow the CMC to closely consider the long term strategy it requires to meet the needs of Queensland.

An independent consulting firm has been engaged to facilitate the review and assist the Commission develop the appropriate strategies and performance measures.

The review commenced in June 2008, with all staff and key stakeholders being given opportunities to provide input early in the review process. The review is expected to be completed by May 2009, and we will continue to keep the PCMC informed of progress through our regular performance reports.

Chapter 11: Conclusions and Recommendations

This submission addresses how the CMC has met its responsibilities to investigate crime and misconduct and undertake supporting activities. The latter includes administering the scheme to confiscate the proceeds of crime, providing witness protection and advising on issues of public policy as requested.

The CMC's Crime function has experienced an increased demand for its specialist services, especially those directed at the confiscation of the proceeds of crime, and the use of its hearing powers. Similar increased demands have been placed on our support functions including forensic computing – a reflection on the ever-growing use of technology by offenders engaged in serious crime. These demands have resource implications.

There are also challenges facing the CMC in determining how it might best support law enforcement agencies, the Queensland Police Service in particular, in regards to efforts to combat criminal paedophilia. It is clearly evident that the police have developed significantly their capacity to investigate paedophilia. This positive change requires the CMC to determine how it can most appropriately provide support in this environment. The CMC, for example, has traditionally directed its attention to extra-familial networked offenders but it also has a research function capable of producing results that could provide invaluable support to investigators.

Our ongoing achievements in relation to reducing misconduct and improving public sector integrity have seen agencies develop their capacity to manage misconduct.

Many larger agencies have their own units dedicated to ethical standards and other agencies have well developed processes for managing complaints and addressing issues of integrity. These capabilities are consistent with the increasing number of complaints being dealt with directly by the agencies themselves.

The degree to which the management of complaints can be devolved to agencies and the manner in which the CMC can ensure agencies appropriately undertake responsibility for the management of them is a matter currently under consideration. In these considerations importance is being given to satisfying two principles: one being that agencies are responsible for the conduct of their staff and the standards the organisation maintains. The other being that the public must be confident that their complaints will be properly managed.

Changes in the wider community, for example those affecting recruitment and retention and personnel in general, are calling on the CMC to examine a wide range of possible human resources and management initiatives. These and other matters, some of which are noted in this submission, are currently being considered by the CMC in the review of its strategic directions. The outcome of these considerations will be included in its *Strategic Plan 2009-13*.

To assist it perform its functions the following proposals, including those bearing on amendments to our governing legislation, have been included in this submission.

1. The CMC requests the Committee's support for an amendment to s.197 of the Act to remove the anomaly in relation to claims against self incrimination.

2. The CMC requests the Committee's support for an amendment of s75(9) of the Act to allow the utilisation of notices to discover in respect of subject officers of Misconduct Tribunal proceedings and witnesses before those proceedings.
3. The CMC requests the support of the Committee to amend the Act to provide CMC officers working in misconduct and confiscation investigations with the power to seize evidence located in a public place or another place that a Commission Officer has lawfully entered.
4. The CMC seeks the Committee's support for the authority to provide information under section 60(2) of the Act to be effectively delegated to the level of senior officer, either by a new provision (similar to that which existed in section 38(4) of the former CJ Act) or by amendment to section 269.
5. The CMC seeks the Committee's support for an obligation to be placed on the CEO of a GOC that receives public funding, or utilises public infrastructure to carry out public functions, to report serious allegations of misconduct to their shareholding minister. The minister may then choose to refer it to the CMC for investigation.
6. The CMC seeks the committee's support for appropriate amendments to the Act to:
 - clarify that a witness cannot refuse to answer questions at a CMC hearing on the ground of spousal privilege;
 - expressly nominate those grounds of privilege which a witness may rely upon to refuse to answer questions at CMC hearings; and
 - expressly abrogate the right of a witness to rely on all other common law grounds of privilege to refuse to answer questions
7. The CMC acknowledges the support from the current and previous committees with regard to telecommunications interception powers, and seeks the committee's continued support in recommending that:
 - funding be made available for the CMC to establish its interception facility
 - the CMC's TI facility be controlled separately from that of the Queensland Police Service.
8. The CMC seeks the committee's support for a review of Chapter 3 & 4 powers in the Act, to develop uniform provisions for the exercise of the CMC's powers.
9. The CMC seeks the Committee's support for the introduction into the Criminal Code, of a criminal offence of misconduct in public office.
10. The CMC seeks the Committee's support for additional funding to enable the CMC to continue to meet the increasing demand for the use of its investigative hearings power.

11. Experience locally and in other jurisdictions indicates that increased resources applied to proceeds of crime recovery yield positive net results. The CMC requests the committee's support for increased funding for the CMC's proceeds of crime recovery function.
12. The CMC seeks the committee's support for agencies to be required to obtain advice from Crown Law in relation to issues arising under the regime of the CM Act.