



# ***PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE***

## **Members present:**

Mr P.A. Hoolihan MP (Chairman)  
Mr J.M. Dempsey MP  
Mr S.D. Finn MP  
Mrs C.A. Smith MP  
Hon. D.M. Wells MP

## **Staff present:**

Mr S. Finnimore (Research Director)  
Ms R. Easten (Principal Research Officer)

## **THREE-YEARLY REVIEW OF THE CRIME AND MISCONDUCT COMMISSION**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 19 NOVEMBER 2008**

**Brisbane**

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Committee met at 9.06 am

**NEEDHAM, Mr Robert, Chairperson, Crime and Misconduct Commission**

**GOW, Dr David, Part-time Commissioner, Crime and Misconduct Commission**

**LAMBRIDES, Mr Stephen, Assistant Commissioner, Misconduct**

**CALLANAN, Mr John, Assistant Commissioner, Crime**

**CHAIR:** Good morning and welcome to our public hearing. I am pleased to declare open this public hearing as part of the Parliamentary Crime and Misconduct Committee's three-yearly review of the Crime and Misconduct Commission. The Parliamentary Crime and Misconduct Committee is an all-party committee of the Legislative Assembly of Queensland. The main functions of the committee are to monitor and review the performance of the functions of the Crime and Misconduct Commission, the CMC, and to report to the Legislative Assembly. Section 292 (f) of the Crime and Misconduct Act 2001 requires the committee to conduct a three-yearly review of the activities of the CMC and table a report in the Legislative Assembly about any further action that should be taken in relation to the Crime and Misconduct Act, or the functions, powers and operations of the CMC.

The preparation for and the conduct of the three-yearly review follows a pattern established over a number of years. The hearings follow a number of actions taken by the committee. On 19 September 2008 the committee advertised in the *Courier-Mail* calling for public submissions to the review. The closing date for submissions was set as 31 October 2008. The committee also wrote to the Crime and Misconduct Commission, all ministers, directors-general, members of parliament and numerous other agencies, organisations and individuals advising of the committee's call for submissions and inviting submissions to assist it in conducting its three-yearly review of the CMC.

The committee acknowledges the input provided by the CMC and the other stakeholders, including members of the public who have provided written submissions to the committee to assist in its review. The committee particularly acknowledges the assistance of CMC Chairman, Mr Needham, and the other commissioners and senior officers of the CMC. The committee did not limit the scope of the CMC's submission, leaving open all aspects of the operations of the CMC and of the Crime and Misconduct Act. The CMC responded by providing the committee with a comprehensive submission on 31 October 2008.

The purpose of these hearings is to hear various viewpoints on relevant issues and to allow the committee to ask questions of representatives from a cross-section of interested organisations. The method that we have considered is to hear an opening statement of perhaps up to 10 minutes, and from that time on to have a period for questions involving the persons appearing before the committee. The committee will consider whether to hold further public hearings as part of the review. Over the next two days proceedings will take the following form: each invitee will have an opportunity to elaborate on their written submissions and there will be an opportunity for those persons to then answer questions, as I indicated, after presenting a brief opening statement in relation to their written submissions.

The hearings will commence with representatives of the CMC. The committee will hear from the CMC Chairperson, Mr Robert Needham. Also here from the CMC are Dr David Gow, Part-time Commissioner; Mr John Callanan, Assistant Commissioner, Crime—I did see Mr Callanan earlier; Mr Stephen Lambrides, Assistant Commissioner, Misconduct; Mr Peter Scanlan, Executive Director; and Ms Helen Couper, Director, Complaints Services. After lunch the committee will hear from Commissioner Bob Atkinson, Commissioner of Police, and Assistant Commissioner Peter Martin, Ethical Standards Command, Queensland Police Service; Mr Peter Savage, President of the Queensland Police Commissioned Officers' Union; and Mr Stephen Hardy and Ms Yvonne Li from Queensland Health. The hearing will conclude tomorrow with submissions from Mr Gary Mahon and Mr Mark Champion from the Department of Emergency Services; Mr Greg Mackay, Director of UnitingCare Centre for Social Justice, and Ms Marg O'Donnell, the Chairperson of the Legal Aid Queensland Board; Ms Julie Cork, a former commissioner; and ..., a member of the public. Finally, if any agency or interested member of the public wishes to forward a written submission or supplementary submission to the committee, they are most welcome to do so.

The members of the committee who are in attendance today are Mr Jack Dempsey MP, Mr Simon Finn MP, Mrs Christine Smith MP and the Hon. Dean Wells MP. I sit as chairman of the committee. I note apologies from Mrs Liz Cunningham MP, who is unable to attend due to a prior engagement, and Mr Howard Hobbs, who is unable to attend because of sudden illness. I wish him a quick return to good health. I also note apologies from other part-time commissioners of the CMC: Ms Ann Gummow, Ms Judith Bell and the Hon. Phillip Nase.

Brisbane

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That concludes my opening statement. I now call on Mr Needham, accompanied by Part-time Commissioner Dr David Gow, who is available today. Welcome. You have given us a very large and detailed submission. After your opening statement we were hoping to address the 12 points of your submission sequentially so that we can deal very directly with issues that are of concern either to yourself, your commissioners or the CMC. Some of those items, as you appreciate, are of great interest to the committee.

**Mr Needham:** Thank you, Mr Chairman, and members, and good morning. I reiterate the apologies from our part-time commissioners. They regretted being unable to be here today. Ms Bell might be able to be here tomorrow if that is required at that stage. We will see how we go at that time.

We have put in a fairly comprehensive submission and I will not go through all of it, but I will touch on a couple of points. One point that struck me when I was looking at it last night and judging what had been done during the time is that we all naturally think of it as a three-yearly review but, in fact, it is only just over two years since the last review because the exigencies of legislative terms mean that this committee must complete its review before the next election. It means that the period that we are looking at it really is slightly over two years, which is not a very long time to be looking at great changes or anything in the organisation. However, there will be a few things that I would highlight.

At the last review we raised with the committee aspects of the changes that were being made in the complaints handling and the complaints services area, that is, Ms Couper's main area of the commission. We emphasised that we were making a significant restructure and a change within that area. I am pleased to be able to say publicly that the committee has received reports on this in our bimonthly meetings and that those changes have now been bedded down and, I think we can say, really quite successfully. The handling of complaints has become more efficient. The timeliness issues are no longer any form of problem as they were a number of years ago when assessing matters and getting them back to the department. Part of that has been the bringing in, under section 40 of our act, directions to the chief executive officers of the UPAs. That has freed up some of the actual mechanistic complaints handling within the Complaints Services area of the commission and given more time to staff to be able to get on to the more valuable work of monitoring and capacity building back into the department.

You would be aware that we have, in the restructure, put in two separate programs or streams; one is the public sector program and one is the policing program. That has meant that there is now a greater knowledge base within the officers within each of those programs of working back with the stakeholders, with the departments, about whom the complaints have been made. It has also brought in the situation where, in most cases, when a complaint comes in it will be handled by an officer and that officer will have, in effect, carriage of it all the way through. If issues come in from the department querying it at any stage, it will be the one officer who will have knowledge of the matter. That has been found to be really quite successful. It gives a better service to the departments. I think the departments appreciate the fact that there is someone that they can come to, rather than just ringing up and getting any complaints officer.

That has enabled us to become more involved in focusing on the monitoring function. You would be aware that in the period since the last review we have been able to become much more active in doing audits back into the departments. Since the last review there have been full audits carried out on seven public sector agencies: Public Works, Communities, Primary Industries and Fisheries, Natural Resources and Mining, Emergency Services, Disability Services Queensland and the Brisbane City Council. There were also quality assurance reviews, which are the different sorts of ones looking more at the agency's integrity framework. They were carried out on five public sector agencies: Queensland Health, Education Queensland, Department of Child Safety, Queensland Corrective Services and the Townsville City Council. The review of the Gold Coast City Council is presently underway.

Similarly with the QPS, there have been able to be audits into various aspects of their complaints handling carried out over the relevant period of time. The committee would also be aware that the promise that was made, or the indication that was given, at the last three-yearly review with respect to the progress on Verity has been to a large extent achieved. The trial, as you are aware, is underway in one region. It has now been extended into a second region. As any trial does, it throws up problems and those problems have been worked through in a cooperative way between the CMC and the Ethical Standards Command.

The project that was envisaged last time of looking at the police disciplinary system has been partially commenced. That is to do with the administrative consensual disciplinary process, the ACDP. I have described it to you in the past at our bimonthly meetings as a ticketing process like the judiciary and the football code: 'These are the facts as we understand them. If you're prepared to admit that those are the facts then we can get on and deal with it in a managerial way to enable things to be dealt with quickly.' That process is also under trial in those two regions. I am pleased to be able to say that I think there has been a great deal of movement and improvement in the complaints services area and that it is not the area of concern that it was spoken about, say, four years or so ago.

One further matter on the misconduct side before I touch briefly on the crime side is that this committee in the last review recommended to its successor committee to keep an eye on how the protocol with the office of the DPP and the CMC was working. We have specifically addressed that and given you some statistics on it at pages 32 and 33 of our report, indicating that in general terms it is working quite well. We do indicate that there were three matters that went a little bit over a year on which, as at the time of our writing the submission, we had not received a response. I can indicate that we have just received

that response and it is for charges to go ahead. That is unfortunate. It does take a year to get the response. But that one is the only one—when I say ‘that one’, there are about three charges of the one set of people—that has taken that sort of length of time. Generally now we have reduced the times to a matter of days or weeks. I think most of them have been within, say, about four weeks, which is very, very acceptable. It has meant that that problem that has arisen in the past of a public perception of delay on the part of the CMC and of public concern about it and perhaps concerns on the part of complainants has not arisen to the same degree as it had in the past.

You might note that with the Commonwealth DPP, whom we very rarely have to send anything to, we have struck that similar problem in that there has been a matter with them now for over a year and we are still awaiting a reply, which is unsatisfactory. But there is not much we can do about it. We do know that they briefed it out to someone from the private bar to do an opinion on and we can only wait for the outcome of that. In general the protocol has worked quite well. I have discussed it briefly with the new DPP and I see no difficulty in it continuing under his leadership.

In crime, you would have seen the reports this morning of the latest closure yesterday, which went quite well. There are no difficulties that I foresee in the organised crime area. The two areas in crime that are touched on in our report where there are growing levels of work coming to the CMC is the proceeds of crime area and the utilisation of our hearings power in support of the Queensland Police Service. I will not go through the details. They are set out quite clearly in our submission, giving the statistics and the increase in work in those areas. I can indicate that we have commenced the process for next year’s budgetary allocation of seeking further funding in those areas, and we have asked this committee for its support for us to receive additional funding.

The approach we take in both of those areas is that, in terms of the power, we are the body in which that power is reposed. The Queensland Police Service does not have it. We should utilise that power as much as we can in appropriate circumstances where we are requested by the Queensland Police Service. The Queensland Police Service are more and more coming to realise how valuable a tool it can be in assisting them to solve crimes in cases where otherwise they are unable to reach a satisfactory resolution of the investigation. It really is putting an enormous drain at the moment on our resources.

In proceeds, it is going the way we anticipated. The demand for the action to be started by us is increasing all the time, as the statistics show. In the five months of this year, we have already exceeded our target for the year in the number of orders restraining. We are slightly behind on settlements, and part of that is that we are tied up so much in getting the restraining orders that it is very hard to put work into the ones we already have to keep them flowing along. Yet it is very hard in lots of these cases not to get in and get the restraining orders, otherwise the property is dissipated. If you give time for the people to utilise the money, move it around and hide it then it is a little bit late. So those are two areas in which we are asking for this committee’s support in achieving further funding.

We have advised you in the past that we are undergoing a strategic type review but a full review of how we carry out our functions. That is not completed at this stage. It is perhaps unfortunate with the timing that we were not able to feed it fully in. On what we have done so far, I think I could fairly say that the consensus is that there will not be enormous changes. Largely that is a matter of common sense in that we have been given statutory functions and we have to carry out those functions. It is just that there is only a certain amount of leeway within those statutory functions as to what matters we can give more weight to or more priority to than other matters.

One of the matters that we have reiterated our priority to is the desire to do more in the way of monitoring and capacity building and prevention with units of public administration because it is always desirable that we prevent misconduct from occurring rather than simply be an organisation to deal with misconduct. So we have reiterated our previous statement of intent by the commission in previous reviews that we continue to give more weight and see if we can get more resources into that sort of area. As usual in these sorts of reviews, the extra things we would like to be doing are always thrown up. The difficulty is always finding the resources and working out what we can not do to enable a transfer of resources from one area into another. That is always the most difficult part. Those are my comments at this stage, Mr Chairman.

**CHAIR:** Thank you, Mr Needham. Some of those matters are covered in your submission. Perhaps we could go to your conclusions and recommendations at page 145 and deal with them sequentially. The first one in relation to the anomaly regarding claims against self-incrimination was the subject of legislation which was passed at the sittings before the Cairns sittings. Was there some other area that caused an anomaly in section 197?

**Mr Needham:** Yes, this is a slightly different aspect of it. The details are set out at pages 6 and 7 of our submission. It is one where I always have to sit down and look at the section again to get my head around it. Perhaps I could ask Mr Lambrides to address it.

**CHAIR:** Thank you.

**Mr Lambrides:** The situation is quite anomalous. If you look at the three dot points at page 7, you will see that if a witness gives false evidence on a first occasion under a claim of self-incrimination privilege and then subsequently contradicts that while still claiming privilege, then the answers can be used against him to prove the initial perjury. Whereas if he or she does not claim privilege initially and then subsequently

does claim the privilege and then contradicts the earlier false evidence, we cannot use the admissions that the earlier evidence was false against the person to prove the initial perjury. So you are going to use those admissions to prove the perjury if the admissions were made after they claimed the initial privilege, which is quite anomalous.

**Mr Needham:** So if the initial answers were given without a claim of privilege, then the subsequent answers cannot be used.

**Mr Lambrides:** That is right.

**Mr Needham:** But if the initial answers were given with a claim of privilege, then they can be.

**Mr Lambrides:** That is exactly right.

**Mr Needham:** It is an anomalous situation.

**Mr Lambrides:** Yes, you can well look at each other. It does not make much sense at all.

**Mr Needham:** You can see why I said I always have to get my head around the point of it as to which way it goes.

**Mr Lambrides:** And that is because of the very wording of the section. I am not sure if it was intended to have that effect.

**CHAIR:** It may not be. I was a little bit mystified about a continuing anomaly because there had been that legislative amendment.

**Mr Lambrides:** It did not touch on this at all.

**CHAIR:** No.

**Mr Needham:** And we did not raise it during that time because we needed to get that other amendment through quickly as it was causing real problems with our continuing inquiries not only in Misconduct but people were also claiming it in the Crime area where it very clearly did not apply. I have found in the past if you are seeking an amendment and you complicate it with other little bits and pieces, it will delay it quite considerably, and understandably, getting through the processes. So we elected to go with the simple amendment to cure that one problem we had at that time.

**CHAIR:** I think that explains that part of it. I will now go to submission 2 in relation to the amendment to section 75(9). I would just mention that there is currently a review of administrative tribunals, including the Misconduct Tribunal.

**Mr Needham:** And I understand that this has been brought up by our general counsel with the officers from JAG that she has been liaising with about the bill setting up that new tribunal. So it could well be covered; hopefully it will be covered in that process.

**Mr Lambrides:** We raised also with that review group another issue which is not unrelated to that one—that is, when a person gives evidence before the Misconduct Tribunal, they can claim the privilege against self-incrimination. For example, if three police officers were at an incident and one is the main instigator and two are merely bystanders but see the incident and do not do anything about it, then the mere fact that they might give evidence that they did not do anything about it after having seen the incident would itself be incriminatory and they could therefore claim the privilege against self-incrimination and not answer any questions. But if they were to come before the commission itself, they could claim the privilege and then they could be directed to answer the questions and you get to the truth. Whereas before the Misconduct Tribunal, the tribunal cannot hear evidence from those people if they claim the privilege against self-incrimination, so we have raised that with them as well. That is not in this submission but I thought I might bring that to your attention because it is a significant issue.

**Mr DEMPSEY:** Is that an education factor as far as the police and any officers of other departments, knowing that if they are forthcoming with that type of information the penalties will not be so severe?

**Mr Lambrides:** We are trying to encourage agency staff to put their hands up at the earliest possible time with a view not to punishing them but to addressing systemic issues that may have arisen. We are trying to get the message out. Our job is not about punishing; it is about improving conduct, improving standards. It may well be that some punishment may have to be meted out as part of a process of showing that this conduct is not acceptable within the agency. That is, the agency says, 'We draw the line at this point. Anything beyond that point is unacceptable and this is the outcome if you do go past that point.' But that is not the primary purpose of punishing an officer. The primary purpose is indeed to change behaviour, to act as a deterrent for other officers, to set a standard. I do not know whether that addresses your question.

**Mr DEMPSEY:** Yes. Would there be any other acts or any other points of law where if they give that information and it was changed it would come back in later form to prosecution or anything else at all?

**Mr Lambrides:** For example, in the Police Service, if they had given answers to a senior officer upon direction, the answers could not be used against them. Similarly, if there was a provision like there is in our hearings, where answers cannot be used against them, then they are protected from those answers, so they are protected from the disciplinary aspects from the earlier interview and from the criminal and disciplinary aspects from the provisions similar to the one we have in our act now.

**Mr DEMPSEY:** That is good. It creates an air of openness and solving the problem.

**Mr Lambrides:** Precisely.

**Mr WELLS:** Can I go back to the first point, to the anomaly. I am somewhat addicted to the principle of the law which is encapsulated in the Latin maxim *ut res magis valeat quam pereat*: 'It is better that the law should be construed so that it makes sense.' I was struggling to try to construe this so that it makes sense to see if I could divine any public policy behind the law as it stands so that it could be seen not as merely an anomaly but also as an anomaly that had a public purpose. I am wondering if you could comment on this. I am just being very careful here; I am not being sceptical of the anomaly, I am just testing it out.

Could it be the case that, if somebody gives inaccurate evidence without a claim of privilege that at that time they are not, as it were, a hostile witness—at that time, they are perhaps or there may be a presumption that they are cooperating with the commission. Whereas if after a claim of privilege they give false evidence, then quite clearly they are not cooperating with the commission and in those circumstances the contradiction which would subsequently be the foundation of a charge of perjury would be more culpable.

**Mr Needham:** If we go back to the basic point here, we are assuming in each of these cases that the person has lied the first time. In my submission, what should happen to them if they have lied in giving evidence under oath should not be subject to a differing result depending upon whether they claimed privilege or whether they did not claim privilege—in other words, whether they, to use your way of putting it, declared themselves to be hostile by claiming privilege or whether they were hostile by lying but did not declare it by not claiming privilege. The outcome should be the same as they have lied; they should be subject to the same prospects of facing a charge. Otherwise, if this became known, then it would mean that people would not claim privilege and they would just lie and they would be able to get away with it, with the fact that their later admission the next day after the video had been shown to them or whatever it was that finally convinced them to admit that it was wrong—

**Mr WELLS:** That convinces me—the point that, if it became known, they would just lie because they would know that they would get away with it. It occurred to me that the draftsman might very well have had in mind that the evidence that they were lying the first time is pretty overwhelming once they have made a claim of privilege but not as overwhelming before they made that claim of privilege. But I think your *reductio ad absurdum*—that if this became known, then people would simply not claim privilege in order to get away with it—argues incredibly strongly for this change, so I would certainly support that.

**Mr Needham:** Thank you.

**CHAIR:** Thank you. We are up to submission 3, in relation to confiscation of evidence located in a public place. Are you dealing only with evidence in that part of the submission, Mr Needham? It is not of the nature of an ability to seize property for the purpose of confiscation of profits; it is just evidence.

**Mr Needham:** It is just evidence. I would not suggest that if our officers were at someone's house interviewing them and they saw \$50,000 sitting on a table they should have the power to be able to seize that, unless there was evidence suggesting that it was part of the actual evidence related to the charge. I think that would be taking it a bit too far to ask my officers to do that, or for them to have the power to do that.

**Mr Lambrides:** The police of course would have that power anyway if they suspected it was tainted property or had some other basis under the Police—

**Mr Needham:** Yes, but that comes back to being evidence.

**CHAIR:** That is then evidence. I am dealing with property that may have a value which is not evidence—

**Mr Needham:** Or just like taking the expensive car on the basis that perhaps it is proceeds, unless you have evidence.

**CHAIR:** Yes, 3 deals specifically with evidence.

**Mr WELLS:** Does this mean that the CMC's powers are less than those powers of the police under the Police Powers and Responsibilities Act?

**Mr Lambrides:** For civilians. Not for the police who are seconded because they maintain their police powers.

**Mr WELLS:** Okay.

**CHAIR:** That is for CMC investigators who are not seconded from police?

**Mr Needham:** Yes.

**Mr Lambrides:** That is right, who are not police officers.

**Mr WELLS:** Is this situation endemic, that the CMC Act does not speak to the Police Powers and Responsibilities Act in respect of the powers of operatives of the CMC?

**Mr Needham:** In respect of civilian operatives of the CMC, that is so. There is a particular provision in our act that says that police officers who are seconded to the CMC retain all their powers as police officers but all those powers of police officers under the Police Powers and Responsibilities Act are not given to civilian officers within the CMC.

I might say that we have not asked for that. In other jurisdictions where they do not use serving police officers as seconded employees, in those circumstances you are going to have your own operatives given those powers, but if we go on, say, a search warrant—a raid of that nature—we will always have one of our police officers there with the power to exercise the powers under the PPRA accompanied by civilian operatives who assist.

**Mr WELLS:** There might be public policy reasons why you would not want civilian operatives attached to the CMC to have all the powers of a police officer, because some of these powers are powers that need to be exercised with certain restraints and they need to be trained in order to have the understanding of the consequences of doing certain things.

**Mr Needham:** That is so.

**Mr WELLS:** But you think that this is a case that differs from those other cases; where crimes could go undetected or evidence could get lost simply by virtue of the fact that it was a civilian rather than a police officer who noticed the smoking gun or the bloodstained knife or whatever it might be?

**Mr Needham:** Exactly, yes. If they are interviewing someone and there is that physical object there and the person is not prepared to hand it over, if it was a police officer the police officer could seize it, whereas if it there are purely civilian investigators there they cannot do that. They have to come back and get a notice from me to this person to be able to require them to hand it over, and of course by that time it could be gone.

**Mr DEMPSEY:** Does that change go far enough in that the general public's perception is that CMC officers have the same powers as police? From a logistical point of view, there are the extra accountability checks and measures that you are going to have to have. At present you have to have that police officer there, which brings up staffing issues such as people off sick or people not there so you cannot have a police officer and you are conducting an operation with people from the CMC. Do you perceive the need to go even further in giving the CMC greater powers for non-police officers attached to the CMC?

**Mr Needham:** It has never come to my attention. I could ask Mr Lambrides, who is generally closer to the action than I am.

**Mr Lambrides:** Normally the situation would not arise where a civilian would be without a police officer in a situation where they are searching premises, for example. Where there is an interview situation we often send out civilians without police officers. In any search situation we have police officers. We would not do a search without having a police officer and, of course, a police officer can use civilian assistance. As long as there is a police officer present in a search situation, for example, then the civilians can do whatever a police officer can do, in effect, in terms of collecting evidence and the like. It is more the situation where interviews are done quite regularly without police being present, and that is the situation we really want to cover.

**Mr Needham:** I think the short answer is that we have not found any need for additional powers for civilians over and above this one. This is the only one that has ever been brought up with me as an additional power that would be of great advantage for our civilian investigators to have.

**Mr Lambrides:** I am reminded that we can apply to have some of our civilians made special constables in certain circumstances as well.

**Mr Needham:** I don't know that it has ever been done, though, has it?

**Mr Lambrides:** Prior to your time it has been done.

**Mr Needham:** It certainly hasn't since I have been there.

**Mr DEMPSEY:** I brought it up to ensure that the CMC's operations were not inhibited in that you had to plan ahead at any given time to make sure you had a police officer present.

**Mr Needham:** It has always been my philosophy that we should use all our powers in a very measured sort of way; that we should only use the most coercive power that is necessary to obtain the particular result we need. In other words, if we can obtain something by serving a notice to discover on a person we will do that rather than a search raid. Similarly, I would not seek additional powers for our operatives over and above what is really necessary.

**Mr Lambrides:** I share that view.

**CHAIR:** Submission 4 relates to delegation of authority from your assistant commissioner to senior officer level about the release of information.

**Mr Lambrides:** If I could address that, it might be a bit easier.

**CHAIR:** I make this comment based on part of your submission: as you are aware, there have been some concerns expressed by the committee about unauthorised disclosures where it has been very difficult to detect who may have done so. You do not feel that this sort of suggestion could widen the net of people that you have to keep a very close eye on?

**Mr Lambrides:** No, I do not because this is for a very specific purpose. This amendment is being sought for a very specific purpose and that is this situation: where we get information from a member of the public or from an agency which they believe raises official misconduct. So, for example, we got some information about an Aboriginal land trust which was provided to us to investigate some alleged fraud. When we looked closely we did not have jurisdiction over the Aboriginal land trust because it is not a unit of public administration. So we have this information. What are we going to do with it? We can disseminate it

via myself or the chairperson, but it would be so much simpler if one of the officers in complaints services simply disseminated it to the Police Service with a dissemination notice so that it is clear that it has been disseminated formally. It would not have to come up to me or the chairperson for something which is very formal. No-one could possibly object to our providing that kind of information to the Police Service. That is what it is aimed at. I get these things quite regularly to sign. It seems to me that it is a lot of work to be done for very little benefit and there is little risk associated with these transfers. That is the background to it.

**Mr Needham:** Again, we work on the basis of having good officers and putting trust in them. If it was a complaint about official misconduct, then of course our complaints services officers can disseminate it to the department to deal with. They have been given the delegated authority to do that without having to refer it to Mr Lambrides or myself to formally authorise it. But if it is something that is not formally official misconduct within the act—

**CHAIR:** Slightly less than misconduct but a breach of discipline.

**Mr Lambrides:** Exactly.

**Mr Needham:** In that case they cannot send it. The commission recently reviewed all our delegations and the approach that the commission deliberately took was to disseminate it to the lowest level that is appropriate. We have good officers in those levels, they are given the training and we should trust them to carry out that job effectively. For them to have to bring up things like this can, unless they go and look at the act and see that there is this little thing in the act that stops us from doing it, engender in them a feeling of a lack of trust by us in them. We would prefer to have this consistent approach to correct this little anomaly.

**Mr WELLS:** Is it possible that an officer of the commission could become aware of the commission of a criminal offence but be unable to handle it because it was not within a unit of public administration and be unable to directly give it to the police officer who was standing next to him by virtue of the fact that, as a matter of protocol contained in the act, he had to refer it to you before it was given to the police officer?

**Mr Needham:** Exactly. I am sure that was never intended. These little things slip through in acts. It is very hard. I would hate to be a draftsman and try to draft bills that cover all these little things. They come up over time.

**Mr WELLS:** However hard I tried, I could not think of a devil's advocate argument to retain that one.

**Mr FINN:** Is there a Latin way of doing it?

**Mr WELLS:** De minimis non curat lex.

**Mr FINN:** I knew there was.

**Mr Needham:** That is a good one.

**Mr Lambrides:** Took the words right out of my mouth.

**CHAIR:** Now that we have solved that with the Latin, perhaps we could deal with what I feel is probably slightly emerging although it has been around for some period of time in relation to GOCs. There has been, as you recall, some previous discussion at our bimonthly meeting in relation to that submission relating to the inability to investigate certain GOCs because they are not a unit of public administration but they are, in a lot of cases, utilising government funding.

**Mr Lambrides:** Or government infrastructure.

**Mr Needham:** I must say that I have agonised for quite a few months of this year over what the answer to this is. I have bothered Mr Lambrides about it quite a few times discussing it with him. If you go right back to the history of it, there was the green paper and the white paper in the early nineties which set out very clearly at that stage the government intent that these bodies should become private corporations, not be advantaged by the fact that they were government owned and not be disadvantaged in their operation by the fact that they were government owned.

The reasoning was that they should be given the same sort of accountability regimes as private corporations. It was said that the then Australian securities commission would have oversight over them—now ASIC. Technically that is correct in that, if you go and look at the Corporations Act, ASIC does have jurisdiction with respect to an employee who defrauds the company, but we all know that ASIC will never take any action. It does not have the resources to enable it to do it. If a board member of Q-Rail engaged in totally inappropriate conduct, I think there is every chance that ASIC would come in and do something about it—perhaps the CEO and the very senior executives, I think there is every chance they would. They certainly would not if a purchasing officer was defrauding Q-Rail by a sweetheart deal with a contractor, which is more the sort of thing we would be concerned with.

When I looked at the bills that went through parliament and the debates on it, the fact that the jurisdiction was being taken away from the CJC was not opposed by any member of parliament. The opposition at that stage opposed the bill but on the basis that it did not go far enough; that these corporations should be privatised not merely made government owned corporations which would have taken them totally away, beyond any doubt. Then the 2007 bill, which became the 2007 act, was following on from what was envisaged in the white paper the first time. It was that next step of removing the statutory GOCs to make them company GOCs. It has been a consistent process. I am somewhat pragmatic in my approach: if that is the government's decision, the government has the right to make that decision.



If one looks at the annual reports of the main ones that we are concerned with, they do not get government funds any more. They raise their own funds by their commercial operations. That said, they do use what is very clearly public infrastructure. Q-Rail operates on the publicly owned rail lines and the publicly owned rail stations and took over, when they were formed as a GOC, the rolling stock, locomotives and everything that was then in place. Since then it buys them out of its earnings. In those circumstances I felt that there was this public perception that there is still a very large public interest in the operation of them. I keep going back to Q-Rail because the CMC earlier in this decade uncovered a very large fraud in Q-Rail. We know that ICAC has recently discovered a number of very large fraud operations going on in New South Wales rail. We know these sorts of things do happen.

I would feel that most members of the public would think that the CMC should be able to be brought in to assist in those investigations when we have specialist powers that the police do not have. We do know that the police have difficulty investigating all the fraud cases that are brought to them anyway.

We have set up this compromise to enable our jurisdiction to be invoked in those cases where it is thought necessary. We have made the suggestion that it be on the basis of a referral by the minister. If a complaint came to us or information came to us that suggested that there was reasonable evidence that something was going on and I thought that it should be looked at, what I would do is bring that to the attention of the responsible minister with the suggestion that he or she might consider whether it be referred back to us so as to enliven our jurisdiction. We thought that was the best sort of compromise.

On the other side of it, section 24—I think it is—of our act which talks about our misconduct prevention function enables us to provide prevention advice and all those aspects not only to UPAs but, if requested to, other entities. What I would propose we do is whenever we produce new material—or perhaps we should do it for all the material we have now—about, say, conflicts of interest or whatever, we send a copy of it to each responsible minister with the suggestion that he or she might like to bring it to the attention of the GOC. Then we can also liaise with the GOCs. If and when we get to the situation where we can charge for some of our training seminars we can offer those to GOCs to provide to their staff.

**CHAIR:** So I get it clear in my mind, what you are considering imposing on CEOs are the obligations that are imposed under section 38?

**Mr Needham:** Not as broadly as that. Under section 38 it is a total obligation to advise of any OM. As we all know, OM can go down to something that really is just a managerial issue—technically, stealing a pencil is OM. I am not suggesting that sort of thing. What I would suggest—and this is something that would have to be refined—is something like the section 40 directions that we have given. They must advise us of category A offences immediately before they do anything. The others they can start to deal with. It would be the category A type offences in our section 40 directions, the more serious sorts of matters, which could be listed out by resolution, say, so they could be altered easily if it was felt necessary to revise them over time. Matters as listed in this sort of schedule must be immediately advised by the CEO to the responsible minister.

**CHAIR:** On that same subject but on a slightly different aspect—there have been a couple of suggestions from departments about the absolute nature of section 38. They are not allowed to look at how far down it goes. You used the example of a pencil. No matter how small the offence, it really should go to the commission. From that point of view, there is a suggestion that there should be some more powers in the unit of public administration itself to be able to ascertain a level that has to go to the CMC. That is suggested in the submissions from a couple of departments.

**Mr Needham:** In effect, like a redefinition of official misconduct?

**CHAIR:** Serious misconduct or official misconduct is the easier way to put it. I do not want to put that as the level they are talking about. As you say, there are levels. I think in some ways a differing of levels puts additional work on the commission as well. There could be some sorting out about at what level they report it.

**Mr Needham:** I have some sympathy with that, quite frankly. The difficulty is always in drafting it. It is what we were talking about earlier—all the unforeseen things. I understand that before I was with the CMC there was an attempt to redraft the definition.

**Mr Lambrides:** In 2001, when the CM Act was introduced, the previous chairperson struggled with that with the parliamentary draftsmen and with Premier's—the Premier was then the relevant minister—and they could not come up with something that would satisfy all the issues so they left it as it was.

**CHAIR:** We are going to hear from others, as I indicated in my opening statement. We may be able to look at that in conjunction with what we are dealing with. I did not want to get off the track of what we have here.

**Mr Needham:** If someone can come up with a good definition we would be delighted to hear it. We have sympathy with what they are saying.

**CHAIR:** I guess it is the same as those queries about whether something that happens within the QPS is official misconduct or breach of discipline.

**Mr Needham:** Or misconduct.

**Mr Lambrides:** The section 40 directions are aimed at allowing them to deal with those matters straight away without reporting them, except by way of a monthly schedule. We could change that to a quarterly schedule or even an annual schedule. It is still important, I think, even for the lesser conduct that we are apprised of it because a lot of corruption occurs from initial minor infractions. If there is a culture that allows the minor infractions, eventually it will lead to more serious corruption. I would be very happy for agencies to become the registry themselves but somehow report to us more generally about the complaints that are reported to them—except for the category A matters, which should be reported to us straight away anyway.

**Mr Needham:** Something that has been talked about in this review, that is not yet completed, is whether we should look at a further step in the section 40 directions. Instead of a monthly schedule, perhaps we could get the departments to do it, as Mr Lambrides said, as a quarterly schedule. You will be hearing from Mr Hardy, I understand, from the department of health. We are giving them our COMPASS system. If they can input all the matters into COMPASS, that will save our staff inputting them into COMPASS.

**CHAIR:** I noted in their submission that they had been granted access to COMPASS.

**Mr Needham:** To get efficiencies like that we would be utterly delighted. Our staff could be taken away from that sort of work and get in and do more of the monitoring and value-adding work.

**Mr Lambrides:** I am not sure it is going to cut down too much of the work of the agency. They should be keeping that information for themselves anyway so they can respond to it. I am not sure communicating it to us is that burdensome. If they think that they will not have to record it and report on it, then I think they are misguided.

**CHAIR:** I am not suggesting that is the thrust of their submission. We will be hearing from them. But it did tie in with what you are talking about with the CEO. You mentioned a schedule of misconduct within a GOC.

**Mr WELLS:** Why would you have any ministerial discretion?

**Mr Needham:** There were two alternative ways of doing it. One was that they be automatically required to advise us. The other one was to be advising the minister. Again, as I indicated before, I take somewhat of a pragmatic view on trying to get amendments. It is generally better to suggest an amendment that might be accepted rather than an amendment that will be rejected.

**Mr WELLS:** I think that it probably goes the other way. This would be the sort of discretion a minister would not want to have. Historically, ministers have never regarded themselves as having any discretion where the CMC is concerned.

**Mr Needham:** I must say that it was in the back of my mind that I would have thought there would not be too many ministers who would receive something who would not automatically pass it on to us.

**Mr WELLS:** I support the extension of the jurisdiction but not on the basis that it involves any sort of ministerial determination because that is an unreal ministerial determination. In these circumstances ministers need to be told what the law enforcement system requires them to do, not give them discretion. Apart from that, I do not think that it is good public policy to give any legal discretion to any minister apart from the Attorney-General because they are not equipped with either the background, in many cases, but, most specifically, the legal advice and support which enables them to exercise that discretion on the basis of legal public policy grounds. I just wanted to test whether there was any strong feeling that there ought to be a ministerial discretion because I would support the extension of the jurisdiction but without any ministerial discretion.

**Mr Needham:** I think I can say that if the committee wanted to recommend that it should be directed straight to us in the first instance instead of going to the minister, then there would be no objection from the CMC.

**Mr Lambrides:** The compromise could still be that they only have to report on fewer things—the category A type matters rather than the A and B matters. That might be the satisfactory compromise.

**Mr DEMPSEY:** If it becomes mandatory that they report that to you, would you then have the resources in place to investigate the number of complaints that may be directed to you from government owned corporations?

**Mr Needham:** Some of them were within our jurisdiction up until the middle of last year—that is, the Q-Rails and the port authorities. The others like Energex and QIC were not earlier, because they were all corporate GOCs from a much earlier time. Some of it would be giving back jurisdiction that we have had up until recently. With respect to others, it would be enlarging the jurisdiction from many, many years ago. It would be a little bit of testing, I would imagine, as to how much we would get. I did get all these figures when I was doing all this, though. It is not a huge number of complaints like we used to get about Q-Rail. Quite frankly, generally complaints—the big things like the operation we did on Q-Rail, which I cannot remember the name of; it was before I came—and that sort of information often does not come from the department anyway, it comes from a member of the public or a whistleblower coming directly to us.

**Mr DEMPSEY:** Considering this issue has been around since 2001 and it has been through the three-yearly review of the fifth committee in 2004 and now we are in 2008, is there anything else that you would add to be able to have that change in legislation?

**Mr Needham:** We did set out some of those statistics in the submission. We were somewhat aware of what the government had said in its response to previous committee recommendations. From memory, we did put some of those figures in the submission. They raised the issue that there was no evidence that there were complaints that needed to be investigated et cetera.

**Mr Lambrides:** One of the problems of course is that because some GOCs have never been within our jurisdiction there has been no obligation to report to us, therefore we do not have statistics on them. We occasionally get a reference to us with respect to a GOC over which we have jurisdiction. There is no obligation to report to us. Therefore, any attempt by us to try to estimate the number of complaints is fraught with danger.

**Mr Needham:** The easy example to say whether anything happens is the Q-Rail instance from earlier this decade and then New South Wales rail and ICAC. I was talking to the head of ICAC a couple of weeks ago and he was saying that virtually everywhere they were looking at in New South Wales they were finding fraud in their various purchasing areas.

**Mr DEMPSEY:** That is right: it is better to be forewarned than to be waiting for things to happen and come up and have your hands tied.

**Mr Needham:** Yes. I might indicate that these organisations are still audited by the Queensland Audit Office. So we work in with the Audit Office, and sometimes it is through the Audit Office that we first get the word that there might be something wrong in an area and to go and have a look at it.

**CHAIR:** Your submission 6—

**Mr Needham:** Sorry, Mr Chairman, but the point just occurs to me. You would remember that I said earlier that if we got information from, say, a member of the public or a whistleblower within the organisation that, under the way we suggested of getting our jurisdiction through the minister, we would then refer it to the minister, whom I would expect would then refer it back to us, enlivening our jurisdiction. So if we were to do it this other way, it would have to be that our jurisdiction was there not just for matters sent to us by the CEO but generally with respect to this category of offences or category of misconduct. That is, it would have to be there all of the time rather than our jurisdiction being enlivened upon a particular event so that we could take those complaints, take that information, and deal with it. Sorry, but I just wanted to raise that extra point.

**CHAIR:** No, that is fine.

**Mr Lambrides:** I would also add that, if we did have jurisdiction with respect to investigating misconduct, we should also have the jurisdiction with respect to prevention and capacity building. It just seems to be anomalous to have that aspect of it—the investigative capacity—without the power to give prevention advice and capacity building and monitoring.

**CHAIR:** How would that sit in terms of funding for your organisation with the substantial number of people that you would then have to go out to within those GOCs?

**Mr Lambrides:** If we charged for our training, that may not be an insurmountable problem.

**Mr Needham:** We are looking at cost recovery—not profit making but cost recovery.

**CHAIR:** I was considering more people on the ground in terms of the additional input that would be necessary.

**Mr Needham:** We would need extra staff. Certainly, if we were providing training into a corporatised organisation like that, I would think that they should pay for it on a cost-recovery basis. Rather than the public having to be giving us extra money to fund us to do that, they should pay for it, as I say, purely on a cost-recovery basis.

**Mr Lambrides:** We are also looking to train the trainer of course, so we could train one of their staff members to become a trainer themselves. So there are avenues. It is just that, if we are looking to raise the integrity of such units, prevention and capacity building are critical not just the investigation of these matters.

**CHAIR:** Okay. Your submission 6 deals once again with privilege but different privilege to what we had discussed previously, and that is in relation to spousal privilege. I have read the background to it, but are the grounds of spousal privilege so onerous against the commission at the present time?

**Mr Needham:** Yes, it is, quite frankly. I am sure Mr Callanan will be able to cite instances where now they just do not call someone if they believe this person is going to claim spousal privilege. In Misconduct it is becoming more of a problem this way. ... the spouse would claim spousal privilege and then would not be required to answer the questions under Mr Callanan's case or, as Mr Callanan prefers me to refer to it, Bush's case. ...

...

**Mr Needham:** ...

And of course it is a claim that you cannot really test. They claim the privilege. It is very hard to contest the fact that the evidence they might give might in fact incriminate the spouse in some way.

**CHAIR:** You do not have the evidence to evaluate it.

**Mr Needham:** No. It has built up over a period of time and is becoming more and more of a problem, and I can only see that increasing over the future time.

**Mr Lambrides:** Especially when both in Crime and Misconduct we have a policy whereby we advise witnesses, whether they are represented or not, that spousal privilege is available to them if we have evidence that suggests that it does. So in those circumstances they will almost invariably claim it, and that is why we do not even summon them in the first place.

**Mr Needham:** I think from memory—Mr Callanan will correct me if I am wrong—there was one Crime witness who in between the time of being served with the notice and giving evidence went out and got married.

**Mr Callanan:** It was a story told by a very frustrated presiding officer.

**Mr Needham:** But it does indicate that, at the extreme, that could happen.

**CHAIR:** Yes. I am not sure I—

**Mr Lambrides:** Big price to pay, I accept.

**CHAIR:** I make no comment.

**Mr FINN:** It is relatively easy these days.

**CHAIR:** I make no comment.

**Mr Needham:** Wiser men will not comment.

**CHAIR:** In terms of that, certainly the committee is supportive of recommending that the commission have the powers that allow it to undertake its requirements without hindrance. We will take those comments on board and consider our recommendations accordingly. I think the next one probably may take us a little bit more time than privilege in relation—

**Mr Needham:** Just if I can indicate on the spousal privilege one there, our request there goes a little bit further. The second dot point of that part is covered in the paragraph above it at page 25. What I understand happened when they amalgamated the CJC and the QCC was that the instructions basically given at the time were to take the two acts and combine them together with minimal changes. That has meant that we have these varying provisions for the same sort of thing in Crime and in Misconduct, and that applies in this area about the privilege as well. It has meant that we have had these sorts of problems, and that is where we will be asking that, when they look at spousal privilege and look at bringing in amendments, they have a general look at our sections with respect to claiming privilege in our crime hearings, our proceeds hearings, our misconduct hearings and our hearings generally. Let us make one section and make it very plain and very clear so that we know what it is and so any witnesses appearing before us know exactly what their rights and obligations are rather than have what has become, obviously, a reasonably confused way. I know I spoke with a counsel who appears fairly regularly at our hearings and I mentioned to him about the problem we had with that misconduct one that we had to get the amendments for. He made the comment that he finds the provisions in our act so difficult to follow. They should be clear so that people know what their obligations and rights are.

**CHAIR:** Do you not have a difficulty—and you raised the difficulty yourself—in drafting where you are not aware of some examples of common law privileges and what they may be?

**Mr Needham:** But I would have thought, with respect, that what the parliament should do is to say, 'Okay. These are the privileges that we say people should be entitled to rely upon in a hearing before the CMC. There's this privilege against self-incrimination. There should be legal professional privilege, say, if that is required and parliamentary privilege.' It should set out exactly what they are. Things like spousal privilege were not mentioned, but it was worded in a way that left open these so-called common law privileges—and I might say it is very arguable whether that exists at common law. We have our Court of Appeal saying it, but since then one of our Supreme Court judges in a paper he has delivered has cast grave doubt upon it. The full court of the Federal Court has cast grave doubt upon it. There is not consistency among judges as to whether there is such a thing as spousal privilege, but it should be set out clearly that this privilege applies, that this one applies and that this one does not rather than leaving it up in the air that it might or it might not.

**CHAIR:** Thank you.

**Mr WELLS:** Of course, we would also sort out the inconsistency among the judges, because if we legislate that there is no such thing as spousal privilege in this context it will imply that there is spousal privilege in the other context and so the Court of Appeal will be right. But at least we will stop *expressio unius est exclusio alterius*.

**Mr FINN:** I was about to ask.

**Mr Needham:** With respect, it does not need to be that way in that it can be worded on the basis that the only privileges that can be claimed are A, B and C. If it does not mention spousal privilege, then that makes it plain, without giving any implied suggestion, that such a privilege does exist. It would exclude every other one that is not mentioned.

**Mr WELLS:** We certainly, one way or the other, would support removing privilege from 'Mr and Mrs Terrorist'.

**CHAIR:** With regard to your submission for telecommunications interception powers, funding is to be made available for the CMC to establish its interception facility and for the TI facility to be controlled separately from that of the Queensland Police Service. It has been suggested in another submission that only the CMC should have telephone interception powers and that the police should call upon the CMC to utilise those powers on their behalf if the necessity arises.

**Mr Needham:** That is not something I would seek—

**CHAIR:** Well, the basis for that, though, relates very specifically to the substantial costs of obtaining the electronic equipment and maintaining the electronic equipment rather than setting up two organisations within your own and the Queensland Police Service.

**Mr Needham:** This is something we are looking at at the moment, and it is not sorted out yet fully whether the costs are very much different between having one combined one or two separate ones. They come in sort of modules and then it is easy to tack on—that is, you can just make them bigger or whatever. But the main part of the cost is in the monitoring—the monitoring posts and the physical people who are there doing the monitoring. There are some relatively large sums of money in the hardware, but that is the smaller part of the costs that are involved. The larger part of the cost is going to be the same whether it is controlled by one entity or by two. I must say that I started off with the immediate assumption that it would be a lot cheaper to have one combined one, and I was fearful that Treasury would take that view and would say that there would be a QPS one and we would tack on the side, which has obvious problems both in reality and very much in perception.

My reaction then was that if we have to share with someone else—and to me it seemed sensible, as I say—then I would much rather share with other integrity agencies and for all the integrity agencies to share the hardware and you just run it down the line to the monitoring facility in your own establishment. But as we looked into it—we are very much in the process of doing that at the moment—it turns out that that might not be so much the case; that it is that much cheaper to have one instead of the two. That is a process we are all going through at the moment, but my main concern was that we not be put in with one that was run by the police and that we be the adjunct of it. As I understand, you can have Chinese walls and everything but the technicians can always see what we would be receiving—not only the lines that we would be taking off but they can see the product if they wanted to. That is the reality of it but then the perception, I think, would be very bad. The public, I think, would find it unacceptable that the police would control our telephone intercepts which could be of police officers.

**CHAIR:** I think it is probably a fair comment to say that the opposite should occur. The CMC is charged with the integrity and has oversight of the police. If there were to be one group with somebody tacked on the side, it should be the CMC. I realise this is more funding and more staffing.

**Mr Needham:** Indeed.

**CHAIR:** But for you to have the oversight. My perception—and I think the public perception—then would be the fact that you have control over what is done. You have control over the information, because in a lot of cases the information that you may gather may not be relevant entirely to the police, particularly with some of the other areas that the CMC deals with, and it does not let it out into that big amorphous group outside.

**Mr Needham:** I can understand exactly where you are coming from. I just shudder a little bit at the thought of it.

**CHAIR:** I did my shuddering before I asked the question, Mr Needham. It will become a matter which I think will tax this committee, your commission and also the senior echelon of the Queensland Police Service.

**Mr Needham:** We did make provision in our new premises for an area to allow for our TI facility. We did not make it large enough for the full QPS facility.

**CHAIR:** Yes. You can rest assured that we will get to discuss that with Mr Atkinson. I know that there are so many other jurisdictions where it has been granted and, although it has been approved, the Commonwealth has not passed its legislation yet to amend the Telecommunications Act.

**Mr Needham:** No, I understood that it was to be presented this session, but it will be into the new year before the Commonwealth act is passed. Then, of course, there is the state act that has to follow. I understand that the earliest we could be looking at is sort of the middle of next year before it would be through.

**CHAIR:** Maybe we can look at that in the budget for the next financial year.

**Mr Needham:** There will be budget submissions going up.

**CHAIR:** No, I appreciate that.

**Mr Needham:** There is a short form going up in December and then there has to be a longer form in February. When we ask for your support for funding to be made available—I do not think there is any doubt that there will be funding available—we are more interested in ensuring that we have control of our own facility.

**CHAIR:** Yes.

**Mr Needham:** On an interim basis at the moment it looks as if we will probably be having to utilise it through the ACC down south where they would do the tapping for us and then send it up on a line to us.

**CHAIR:** Yes.

**Mr Needham:** Their officers will have to be vetted and everything, but we are in discussions with them at the moment.

**CHAIR:** Yes. You still have the capacity to obtain some of that information from the ACC anyway, do you not?

**Mr Needham:** We do at the moment when we have joint operations with them, because almost invariably that is only ever in Crime. We had it for about two weeks in one Misconduct one. That was all.

**Mr Lambrides:** Notwithstanding the fact that we wanted it to continue, the agency did not, so they just terminated it. It proved productive in that very short period of time that we had it, but unfortunately that did not determine whether they should leave it on or not, because it was productive in the state sphere rather than—

**Mr Needham:** Their sphere.

**CHAIR:** Hopefully, that will come to fruition and we will see whether it does enhance investigations. I think it will enhance investigations in relation to terrorist type investigations. I need some clarification, although you have dealt with it in terms of 8. The CMC seeks a review of chapters 3 and 4 powers in the act to develop uniform provisions. Who were you considering to review those?

**Mr Needham:** We would have to do that with officers from the Department of Justice and Attorney-General.

**CHAIR:** But you want to do that independently of the three-yearly review?

**Mr Needham:** I would think it is something that would have to be done independently. What we would be seeking is your support for it and then in the Attorney's office they would have one or two people within the policy area of JAG charged with doing the review working in with us. We are not seeking an extension of powers or anything; it is just rationalising them and putting them in the same form instead of the way it was, as I said, of just cobbling the two acts together.

**CHAIR:** Yes. When you talk about the uniform provisions, what provisions actually contrast now, or are not uniform?

**Mr Needham:** The various powers—even simple things like a notice to discover. There is a separate provision setting that out for a Crime investigation and for a Misconduct investigation—all the ones that we have at the top of page 29. The procedures on the claim of privilege vary depending on whether it is a misconduct, or a crime, or indeed a proceeds.

The refusal to answer questions at a hearing—we have this situation where that ruling came down with respect to self-incrimination in Misconduct and everyone started making the same argument in Crime, whereas technically they should not because the provisions were quite different and separate. But people naturally assume that it is going to be the same from one to the other. 'It is the CMC hearing' is the way they look at it. It all just adds to this confusion not only for our own staff having to be very careful in what they do and our templates having to be separate for the various ones but also for members of the public who should be able to know what their rights and obligations are vis-a-vis the CMC when we are doing an investigation with respect to them, rather than having to go through this very difficult process of working out which section of the act applies and, therefore, which particular provisions apply and how it can be done in that particular instance. It is not a matter of urgency; it is just a matter of rationalising it over a period of time. It might take 12 months or so to do it, but that is okay. At the end of it we would have a clearer and more easily understood act.

**CHAIR:** We have No. 9—introduction of criminal offence of misconduct in public office. I noted your submission related to Hong Kong. After listening to their commissioner last year, they appear to have some reasonably effective definitions for almost everything.

**Mr Needham:** Yes. I do note that since we wrote this submission OPI has recommended in Victoria—and at the moment misconduct in public office is a common law offence—that it be put into statute to set out specifically particular provisions or particular elements of the offence. Now, of course, here it would be in statute because we have no common law criminal offences at all.

**CHAIR:** No.

**Mr WELLS:** I am looking at the examples that you have given on page 31, at the top of the page. I cannot see why you could not get a conviction for these people if they did it in Queensland in each case under the existing law. For example, the first one is an off-duty policeman who did not arrest the person he should have arrested. That is under a section of the Criminal Code—and I cannot remember what that  
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section is. A public officer who does not do what he is required to do commits an offence. Further down there are examples which seem to be misappropriation of property or the fraudulent taking of information. I would be really disappointed if the DPP could not fit them with something.

**Mr Needham:** There are some where you could squeeze it within an offence that is already in the code, but there are a lot of them where they do not fit easily. The second bottom one of those dot points in the top half of page 31 relates to a police officer who, in effect, falsely represents that this piece of paper he is waving around is a search warrant. You could charge him with fraud, but it is really a stretching of the fraud provisions of the code to charge fraud in that circumstance, whereas really what he is doing is misconduct in his public office as a police officer to be executing a search warrant. That is part of his job and in this case he is using that authority and that power that he has to enable him to do this. With respect, I would submit that that sort of thing would be so much more easily understood and readily accepted by a jury rather than a judge having to squeeze it into a section where, technically, it would fit—and any lawyer would have no difficulty in seeing how technically it can fit within the fraud provisions of the code—but people do not think of that sort of conduct as fraud. They think of fraud as where someone defrauds you of your money or your property. So that is why we are looking for these sorts of things.

Even for things like the misuse of confidential information by a police officer, there is an offence under the Police Service Administration Act. It is a summary offence—a fine; it might be 12 months, which would never be given—that sort of thing. It has a statutory time limit on it. Whereas if you have the giving out of information, which is enabling people to carry out a big drug operation or something of that nature, that is so serious that it should not be just dealt with under the Police Service Administration Act. That is conduct that is so bad that it is criminal and should come before the superior courts. This is the type of situation and the type of charge that allows for that sort of conduct.

What set my mind on thinking of this as an offence that would be very good to have was at the APSAC conference, talking there with Graham Ashton, the 2IC of the Office of Police Integrity. He was saying that they use misconduct in public office all the time, because it just fits so well within the sorts of things they are investigating and finding. Then Len Roberts-Smith from Western Australia was commenting on it as well. I came back saying to my staff that we have to have a look at this. We got one of our officers to research it and find out a little bit more about it in the common law jurisdictions. It seems to me that it would be extremely useful to have it both for investigating authorities and for the DPP, and for the courts then in dealing with conduct.

A prime example is that one of the police officer—I do not know whether it is in here; yes, it is the second last dot point on page 31—where he pretended that he was recruiting these women as informants and as part of it made them strip naked and took samples of their pubic hair. He had to be charged with stealing their pubic hair. Technically, of course, he could be charged with that offence but it really does not express the gravamen of his conduct. His conduct was misconduct in his public office as a police officer.

**Mr WELLS:** I accept entirely what you are saying. With these things, of course, it is a matter of balance. For example, I was a witness to a trivial event in my electorate. A young girl walked past a police officer and the police officer said, 'Sandra, come here straightaway.' The names are changed in order to protect the guilty. She said, 'No, p- off—where 'p' stands for an algebraic expression—I'm doing something else at the moment.' He said, 'You're not failing to obey a police instruction, are you?' She said, 'You bet your life,' and kept walking. Of course, he could have insisted but he was only joking and she was only joking, and they knew each other, I assume. But if he had insisted or if the circumstances had been marginally changed, you would get him under the offence that you are proposing. Would you really want to make him a criminal?

**Mr Needham:** With common law offences, part of the element of the offence is that the conduct is serious enough to be criminal. That is somewhat like criminal negligence—section 279 of the code, I think it is; it is so many years since I have been involved in any of those. Criminal negligence is conduct that goes beyond a mere civil negligence issue between citizens but has been conduct deserving of punishment. Your negligence in the handling of this dangerous object—a car for example—is manslaughter based on criminal negligence. Your negligence in handling this car was so bad that it goes beyond a mere issue of tort between citizens but is conduct that is deserving of criminal sanction. It would be the same with this.

Your safeguard on that is the judges, the courts. If you put up a specious little thing, the courts will just throw it out. The prosecution will be chastised for bringing that type of action. The DPP, of course, would be looking at this sort of thing in exercising the discretion as to whether or not to prosecute. One of the elements of it is this issue of misconduct that is so serious as to be criminal.

**CHAIR:** I think what you are suggesting is probably analogous to the offence of stealing and the taking of shop goods, which was made a regulatory offence. Although it was not any less a serious offence, very often it would be a one-off or it would not be a stain on that person. They would be charged with taking shop goods the first time, and the second time it became serious enough to be charged under the code. Is that the sort of thing that you are suggesting?

**Mr WELLS:** No, he is suggesting something different. What you have is an example of things in two different statutes. What is being suggested here is a new offence that would go into the Criminal Code. A certain descriptor would capture both the bloke who deserves to be criminalised, who made people strip Brisbane

down and took samples of their body parts, and, in the case that I gave, the policeman who was flirting with the girl in the shopping centre. What Mr Needham is saying is that you can have a concept that the misconduct has to be of a degree such that it is criminal, and he gave the example of criminal negligence.

The trouble with criminal negligence is that the concept is incoherent. The concept of criminal negligence is incoherent. In cases where judges try to explain it to juries, they say, 'Ladies and gentlemen of the jury, criminal negligence is negligence to the degree which the law deems to be criminal.' That is the best explanation that they can give because the concept is incoherent. There is no clear dividing line. The whole concept is question-begging.

**Mr Needham:** With respect, I cannot really agree with that. There is that classic direction that is always given; I think it is Brightman's case. I forget the name. They always direct the jury in terms of that which I probably slightly misquoted before, but talking about it as being negligence that goes beyond being an issue between citizens and becomes conduct deserving of criminal sanction. We have that in a lot of cases. Dangerous driving is a classic.

I remember in the past when I have prosecuted dangerous-driving cases, I would make the opening to the jury that this is an issue where you are going to be called upon to set the standard. It is not like stealing. If it is a charge of stealing, you prove facts A, B, C and D and, once you are satisfied that those facts are proved beyond reasonable doubt, that is the end of it. In dangerous driving, the prosecution will have to prove the facts: how did he drive, what speed, where on the road and all those sorts of things, depending upon the particular case. Once you have decided that, that is not the end of the case. You then have to look at those facts that you have decided are the facts and see where the standard lies. Was that driving dangerous or was it not? Juries are given these sorts of tasks on a not irregular basis. Not every case is going to be, 'You find these facts and therefore the person is guilty.' It is, 'You find the facts and then you see where they sit within the standard that is required in the community.'

**Mr Lambrides:** Provocation—

**Mr Needham:** Yes, provocation is again given to me as an example where you find the facts and then see where they sit within that standard that is required for provocation of the reasonable person.

**Mr WELLS:** I accept your point. Very often the jury has to make decisions about what constitutes reasonableness and so forth. However, this is not just a matter of the jury making a determination as to whether something is reasonable. It is a jury making a determination as to whether something which fits a description of something that is declared illegal by the law is sufficiently serious to go ahead with it. That is what they are doing. It is a different sort of decision. I have reservations.

**Mr DEMPSEY:** In relation to omitting, while you cannot criminalise stupidity, there are circumstances where it is obvious that people are not following through or are leaving things out that more or less go against offences. Can you think of any examples—

**Mr Needham:** Of omission?

**Mr DEMPSEY:** Yes.

**Mr Needham:** I cannot immediately think of examples. I would think misconduct in public office would more often be a positive act than just the mere negative, but you could have some negative acts that could come into it if they were serious enough.

**Mr Lambrides:** In the child safety area I would imagine there would be circumstances where officers just turn a blind eye or with health issues they turn a blind eye to what should be done.

**Mr Needham:** Most health issues would be covered by the provisions of failure to provide the necessary medical treatment. Those sorts of things are already covered in the code. With child safety, it would have to be an extreme example but some could occur.

**Mr DEMPSEY:** I was looking more at information. I know we seem to be honing in on the police, but take the scenario where a police officer has information but does not act on it until after the event but if he or she had acted on it beforehand it could have assisted. By holding back and restricting, and using the defence of what—

**Mr Needham:** If we took an extreme example: if a police officer or the person on the 000 line got a call that suggested that there should be some immediate action taken, that there was an immediate danger to some person, and deliberately chose to do nothing about it. It is hard to envisage that happening. We do know there are cases where it can happen inadvertently, negligently or those sorts of things. If you had a case that was bad enough where someone has said, 'Too bad, I'll just let it go,' and a person was stabbed or whatever, then it could be misconduct in public office. At the moment it would be a disciplinary offence. In the example of the police officer who in the course of duty took no action to intervene in an assault on a victim that proved fatal, he or she—I do not know which—was charged with misconduct in public office.

**CHAIR:** We will adjourn for morning tea. We are a little bit over our time frame, but we will be recommencing with the Crime and Misconduct Commission.

**Proceedings suspended from 10.56 am to 11.33 am**



**CHAIR:** I apologise for the later than anticipated start. I do not think it will hold us up in our deliberations but there is a matter on which we were requested as a committee to deliberate. The committee had previously resolved in relation to tabling that all submissions would be tabled at the end of the hearing owing to the short period of time. The committee has resolved to vary that slightly in that the submission by the Crime and Misconduct Commission will be tabled by the committee and published under section 50(2)(b) of the Parliament of Queensland Act as from now. So the document is now a public document.

I think we were up to 10, which related to additional funding to continue to meet the increasing demand for the use of the investigative hearings power. That relates to your submission on pages 55 and 56 in relation to combating major crime. Could you perhaps deal with that, Mr Needham. Mr Callanan may have something on that.

**Mr Needham:** I think the figures and the statistics as shown on pages 55 and 56 speak for themselves. Mr Callanan might be able to bring us up to date on the number of hearing days in the first three months of this financial year. I thought I had heard that there had been 80. Yes, there were 80 hearing days for the first quarter of this financial year. That cannot continue all the way through because that would make 320 for the full year. We cannot continue on at that sort of level. But it is very clear that we are going to go higher than the 151 of last year.

We found some extra money. We were allowed to hold over some savings that we had from last year's budget from staff shortages which gave us savings. We were allowed to hold some of that over into this year and that gave us some additional money, which was very handy. Out of that we have brought on an extra lawyer and a couple of extra administrative officers. That extra lawyer can be a counsel assisting. But, really, what we are going to need and what we are seeking in the long term is an extra lawyer at the executive legal officer level who can preside at hearings and the continuation of this extra lawyer on a recurrent basis to be an additional counsel assisting and then additional administrative staff. At the moment Mr Callanan is presiding too much in that it is taking him away from his overarching duties across the crime area of the commission. I want to get it back to the stage where Mr Callanan can find himself doing perhaps a few of the more serious matters each year instead of doing as much as he is at the moment.

**CHAIR:** I found some inconclusiveness in the figures. That is one of my concerns. If you have a look at the history of it—and I appreciate the figures you have used—each rise in one year has been followed by a dip in the next year. The 2008-09 forecast is based on the number of days already spent in hearings in the five months of this year. Are the indications that that will continue?

**Mr Needham:** Yes. What has changed is that when I first came to my position the matters that were coming through on request from the Queensland Police Service were really what could be called 'cold cases'. They were old cases where they had done everything they could and had got to a dead end in the homicide—most of them were homicides. They had got to a dead end. So as a final ditch effort they would come to the CMC and ask, 'Can we utilise the hearings power?' Sometimes it was done on the basis of saying, 'At least it will reassure the family left that no stone has been left unturned. We have done every single thing that we can to attempt to find the perpetrators of this offence.' That has changed now. We still get references for those and, quite frankly, we are not going to be able to do all of those now because it will be a matter of prioritisation.

More what is coming now are the offences that occurred last month. I will give some examples. You would remember the bouncers at Fisherman's Wharf. The organisation that employed the bouncers employed the solicitor to act for them all. They were all advised to say nothing, so they refused to talk to the police. The police were getting nowhere. They were just getting stonewalled because they could not get any story out of any of these bouncers as to what had occurred. So they came to us, we held the hearings and charges have now been laid. Another example is the bikies, the outlaw motorcycle gangs, and the arson of the Rebels clubhouse. Naturally bikies do not talk, even if it is an offence against them. They were brought to the hearings, charges have been laid and there have now been pleas of guilty.

With a few of those cases, the police have very suddenly woken up to how valuable this power is and they are coming to us all the time now. There are others that I will not speak about here publicly. The ones I mentioned are older matters that I can speak about. But there is every indication that that will continue exactly that way. With 151 days last year and 80 days in the first three months of this year, I think that is a pretty good indication that it is going to keep on going the same way.

In fact I am rather sorry that in doing the fit-out of our new premises—we have got the larger public hearing area and the smaller secondary hearing room—we did not put in the same sorts of things as we have in our training rooms, where we have these soundproof folding walls that can come across. I think we are going to have to retrofit those into the big hearing room to be able to turn it into two smaller ones because at the moment Crime often has two hearings going on and if Misconduct comes in we would need that third hearing room. That is the way it is going. I think next year we are going to have to start altering our new premises already.

We did discuss at our strategic review whether we just say to the police that we cannot do this. But the attitude that was taken was that this power has been accepted by parliament as a power that should be able to be utilised in appropriate circumstances. It was decided to give that power to the CMC perhaps in order to have that sort of accountability control over it that you, Mr Chairman, were referring to with respect

to the TI power. The view we then took was that we should, on those occasions where it is appropriate that it should be used, make every effort to utilise it. There should be savings within the Queensland Police Service, but I do not know that we could ask them to transfer any of the money over.

**CHAIR:** Actually, it was suggested by the Queensland Police Service that there was in fact some transfer of positions from the Police Service to the CMC.

**Mr Needham:** It escapes me as to what they would be.

**CHAIR:** I will see if I can find the actual claim. The commissioned officers' submission states—

Eighty-four police officers are seconded to perform duty at the CMC. The CMC receives funding for each of those police positions. This union holds concerns regarding the growing number of vacant police positions at the CMC. Inquiries made regarding one commissioned officer position which had been vacant for two years reveal that that police position will not be filled.

**Mr Needham:** That is not quite right. We receive funding. We do not receive funding on the basis that 'This funding is for police positions.' We just receive funding.

**CHAIR:** You just have it for officers.

**Mr Needham:** We can choose to utilise that funding with police positions or with civilian positions. I have had correspondence with Mr Savage about that. That position is not vacant. It has been filled. When one of our inspectors in the misconduct investigations area retired, we made the decision to replace him not with another police inspector but with a civilian investigator. That was done advisedly for various reasons: the change in the sorts of investigations we were doing, the fact that it is a lot cheaper to have a civilian investigator than a police officer position—that was one of the factors, only one; and the difficulty we had with the fact that civilian investigators only went to a certain level, and there was no career structure for them at all. So this enabled us to appoint a civilian officer at a higher level which helped to create a career structure. Everyone should have that career structure that they can look forward to progressing through.

**CHAIR:** I must admit I was rather surprised at that comment and that is why I raised it in terms of funding, because it has not been raised as any concern in any of the meetings with you and in a submission it came a little bit out of left field.

**Mr Needham:** Yes.

**CHAIR:** You have given numbers for 2008-09 and you mentioned having another lawyer on staff. Mr Callanan carries out those investigative hearings now. Do you have the jurisdiction to have somebody else to do that?

**Mr Needham:** When I first started, Mr Callanan did virtually all of them. Since that time, we have brought it in as well that the executive legal officer within Crime has also been authorised by me to preside at hearings. So the hearings within that Crime area are presided over either by Mr Callanan or by Mr Scott. That will continue.

What we would be seeking is a further executive legal officer with sufficient experience also to be able to preside at hearings. So most of the hearings would then be done by the two executive legal officers, but it will enable Mr Callanan to not do as many plus it will enable Mr Scott to not do as many because he is the senior lawyer under Mr Callanan in Crime and he, in effect, keeps an oversight role over the more junior lawyers and he keeps abreast of all the legislation vis-a-vis warrants. He has those additional responsibilities and he has been taken away a little bit too much from that area. It means that little things can go wrong with our warrants and then the parliamentary commissioner can come and do an audit and do a report to you of this little slip-up that he has found, and we like to avoid those as much as we can and Mr Scott is part of our process of doing that. So I would like to get him a little bit more free time to be devoting to those other issues as well as just hearings.

**CHAIR:** Does anyone else have anything on that one?

**Mr DEMPSEY:** Not on that one.

**CHAIR:** Submission 11 relates to experience locally and in another jurisdiction about proceeds of crime recovery and increased funding. Do you have anything to add on that?

**Mr Needham:** Again, we have set out the statistics. We have always known that it was going to go this way. Like any of these things, a lot of police do not think about it. It is going to take a while for them to think after they have arrested someone that they should send it through the process to come to the CMC to apply for a proceeds order. That knowledge is becoming greater and greater so more matters are coming through. We had additional funding a couple of years back on that that enabled us to go from having two teams to having the third team. That has been reflected in the increase both in the number of restraining orders that have been obtained and in the value of settlements that have been achieved.

**CHAIR:** Sorry to interrupt you. You mentioned in your opening that there was some slow down in that though because of the—

**Mr Needham:** In the settlements.

**CHAIR:** In the settlements, yes.

**Mr Needham:** The difficulty is that the more and more of these we take on, the more and more work there is to do in the follow-up to them, yet it is very hard not to take them on. We were at the stage a while back where the workload on the staff was becoming prohibitive. That eased off and got to a manageable level when we got the extra funding and the additional team. It is very quickly coming back to that stage

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where it is prohibitive, with staff working too long hours. There is also the danger then of not meeting court deadlines and those sorts of problems. We are fairly confident that we might get some funding for this because it is an area where, if we get additional funding, we get additional money more than the funding into state coffers.

**Mr WELLS:** Mr Chair, this one is obviously good sense.

**CHAIR:** Thank you, Mr Wells.

**Mr DEMPSEY:** You mentioned police having additional components of their training. Is there a need also to look particularly into that aspect, more so than what their brief is?

**Mr Needham:** I understand it is dealt with in detective training. I do not know whether Mr Callanan has any comment on that. I would not have thought there was any need for additional training of the police.

**Mr Callanan:** It is that kind of thing that partly accounts for the continuing increase. The more you educate police about the availability and effectiveness of proceeds, the more they want to take it up and engage with us in following through on it.

**CHAIR:** You become a little bit of a victim of your own success.

**Mr Callanan:** Can I say that applies with hearings as well. You talk about the figures having kind of dropped and gone up again. We embarked on a bit of a regional tour promoting hearings and so on, so I think that has had a significant impact—that is, the police have not just suddenly woken up one morning and thought, 'We're going to do thousands of days of hearings in the next few years.' There has been a process of educating the police.

From my point of view, the real increase in hearings has come much more from the police taking up the option of hearings in their organised crime investigations, so that they do not go through the Crime Reference Committee; they come to us through one of our internal committees and that is the real growth area. It is true, as Mr Needham says, that there has been an increase in what we call the serious crimes—the murders, arsons, rapes and so on—but I think the kind of hidden growth is the organised crime side of it. For some of these serious crime things, you can do the whole of a hearings program in two or three days. A lot of these organised crime investigations involve weeks of hearings to get to the true leaders of the syndicates involved.

**Mr WELLS:** Can I ask a question about the final recommendation. What if you had a situation where there was a matter which, say, the Attorney-General thought ought to be investigated and the CMC said that it was outside of its jurisdiction and the Attorney-General said, 'No, I've got the Solicitor-General's opinion that it is within the jurisdiction'? What would the CMC do then? Would they go to Crown Law and ask them to set up a Chinese wall or would they go outside?

**Mr Needham:** We normally do not go to Crown Law for advice. We would normally seek independent external advice.

**Mr WELLS:** But this recommendation is, 'The CMC seeks the committee's support for agencies to be requested'.

**CHAIR:** This is other agencies.

**Mr Needham:** Which recommendation is it?

**CHAIR:** Recommendation 12. We have moved on to 12.

**Mr WELLS:** I never understood why the CMC did not use Crown Law. I thought this was a recommendation that the CMC should do so, but it is not.

**Mr Needham:** No. This is a department. Departments now are not tied to getting advice from Crown Law, of course; they can go to external lawyers or to Crown Law. The difficulty that we have seen in some matters is that some of them go to Crown Law and they are given advice about our act, say, in these terms. We liaise with Crown Law on these sorts of issues and Ms Couper liaises with them and meets with them quite regularly, so we are generally of the same mind as to the legal interpretation on these issues. The danger is that, if a department chooses not to go to Crown Law but out to some firm of solicitors who have never dealt with it, they might look at it for the first time and come up with a legal opinion that contrasts with ours and with Crown Law. That can lead to obvious difficulties. We are suggesting that there should be uniformity in these sorts of things and that they be tied to obtaining advice from Crown Law in relation to issues under the regime of our act.

**CHAIR:** Isn't it a little bit difficult though? If every agency gets advice from Crown Law, certainly you will have advice that deals very specifically with your act, but if that agency takes action based on that information and an outside legal agency or referral agency contrasts with that and acts on behalf of a person who does not agree with what the Crown Law advice may have been, don't you create an atmosphere of opposition? 'Opposition' is not quite the right word; I suppose you end up in an adversary situation.

**Mr Needham:** That is the fact of our system of law.

**CHAIR:** Yes, I know that. Sadly, I appreciate that, but don't you create it in another way where you have everything done by Crown Law? I know it might give a consistency.

**Mr Needham:** What we are suggesting is that all of those Crown agencies—and in this case we are really talking about departments; we are not talking about, say, local governments—should at least be adopting a uniform approach to the interpretation of provisions within our act. We can have the adversaries, if we want to use that term, the other parties to the matter. Of course we cannot tie them. They will go to their lawyers and their lawyers might give different legal advice. That is part of our system. But it really is not good, I would suggest, if one department interprets our act and acts upon it as if this is the meaning and another one acts upon it in a different way. There should be consistency at least within the Crown agencies.

**CHAIR:** It is limiting the Crown agencies only to the Crime and Misconduct Act.

**Mr Needham:** Yes.

**CHAIR:** I noted your comment on page 99 about consistency of approach. It concerned me somewhat that in that consistency of approach you might be creating an even worse adversarial situation. If it is only in relation to the consistent operation of the act then it probably is a plus.

**Mr Needham:** I would think it would be most undesirable to have a legal firm dealing with a matter with respect to our act with one department and being told, 'This is what you have to do', and then going to another department and doing the same and being told, 'No that is wrong, you have to do something else.' There should be consistency within the Crown departments on an act which is overarching across all of the departments.

**Mr WELLS:** This would have the benefits not only of consistency but also of corporate memory.

**Mr Needham:** Indeed.

**CHAIR:** I think that we could live with that course of action. That deals with the submissions. To go slightly further and to raise other matters, Mr Finn has some specifics.

**Mr FINN:** Thank you, Mr Chairman. I note today that this is part of the process where we deal with structural and systemic matters in relation to the act. Obviously, though, when we call for public hearings we get other matters brought before us in submissions. I note that we have one of our bimonthly meetings only a week or so away, so there will be other opportunities to raise some of those details. Reference was made to an unpublished submission earlier regarding staffing. That submission also suggests that it takes longer for the CMC to investigate matters against police officers than it does against other public figures or other people. There is a suggestion in that submission. I am wondering whether you would like to comment on that suggestion. The reason I ask this is that when that submission comes before us I will be asking them to comment, too.

**Mr Needham:** Inherent in a submission like that is sort of an implication that it is done deliberately. Insofar as there is any implication intended, which there mightn't be—I do not know—but insofar as that is intended, then of course that is not correct. In the factual situation of whether it does take longer—possibly it does in some cases because we do know that very large percentages of police officers, as soon as they are investigated, go on sick leave and it delays things greatly before they can be interviewed. They are on sick leave all the time and they cannot be interviewed and things like that. We do not tend to get that with other public officials in the same way as we do with police.

I am thinking of two very large operations that have been underway for the last couple of years; one involves the honourable Mr Nuttall and the other one is the Capri matter that we have reported to you on. Both of those have gone now a couple of years. They are both extremely complex and they have both taken a number of years. There are some matters that do take time. It is unfortunate that the Capri matter is so complex and interwoven that it involves a whole lot of individual officers. If it had not been so big and it had been just a smaller part about one or two of these officers instead of the whole thing it would have been able to have been done much faster.

Might I also say that compared with the time that the QPS takes to investigate things—and that is what Mr Savage should be familiar with—I would submit that we are as fast. I can remember a number of years ago with the Redland Shire Council, which this committee or some members of this committee might recall, there were some allegations there was a possibility that some of those would go to the Queensland Police Service to be investigated and the estimate of time that was going to be taken to investigate them quite frankly surprised me. In the end it did not do it. I think I have to wait and hear what Mr Savage wants to say. We would like things to be able to be done faster. Certainly some of the investigations of police carried out within the Police Service we would like to be done faster. Some of those we think do take longer than they should.

**Mr FINN:** I will come to that point in a second, but you cannot identify structural impediments that relate differently to the investigation of police than others?

**Mr Lambrides:** Could I add one thing and it is this: when you have finite resources you have to prioritise. There will be matters which we have told this committee we will prioritise, we will deal with first: DGs, parliamentarians, ministers. They are the matters that we divert resources to. There will be occasions when resources are taken off matters involving police officers and more junior public servants and moved on to these matters. That will cause a greater delay. In that sense what is being asserted might be true, but only in that sense. It is not a conscious decision in any way.

**Mr Needham:** I might say as well that it is generally more difficult to investigate allegations against police than against, say, junior public servants. You are investigating often experienced investigators. They do not make it easy. If they came in and told us the truth the first time around we could do it in a quarter of the time. They have to be brought back to a later hearing when we have heard what they have said, we have investigated it and we can show that these parts of it are not correct.

**CHAIR:** Could I follow on from what Mr Finn said. I think I should correct one comment: the actual submission, and it was a late submission, is not from the commissioned officers; it is actually from the commissioner. We will be speaking to the commissioner later on today.

**Mr FINN:** Sorry, Mr Chairman, I was referring to the commissioned officers' submission, but I was about to go into the other one.

**CHAIR:** I did not want to pre-empt it. Certainly, as you are aware, we want to fully cover all of these matters and you would have a right to give us further detail in relation to those. The second one was a later submission and consequently, because of the short time frame, it has been slightly different to previous hearings.

**Mr FINN:** That leads me into a broader area that I am sure other members might want to make some comment on. Something that we will grapple with in the review is obviously the whole issue of devolution. My concern is that the issue of devolution significantly impacts on public confidence in the CMC, in our role and in the police. I am wondering what suggestions you have from a review of the act point of view that might give some guidance to the committee. I note that there is a submission from the commissioner that says increased devolution indicates increased support for the QPS's ability to investigate matters. Their view is that that is a confidence in them. I am not too concerned about whether it is a confidence in them or not; what I am concerned about is how do we grapple with that in a review sense to ensure that we address that issue of public perception or confidence in the whole process?

**Mr Needham:** As you would see in our submission, we have not sought any amendments to the act vis-a-vis devolution. The act requires devolution. It is set out as a fundamental tenet really in the act. I have expressed my view in our private meetings, and I am happy to express it publicly, that there is a common sense and a practical reality behind the need for devolution in that it is not practical for the CMC to investigate every single allegation that is made with respect to a unit of public administration within Queensland. That is the first part. Secondly, it is not the best way to deal with matters.

All the research everywhere shows—and this same approach is adopted by all our counterpart agencies in other states—that the only way to instill an ethical culture within an organisation is for the management within that organisation at all levels to accept responsibility for the ethical conduct. It is shown that if you bring in a system whereby the responsibility for it is really cast off onto an outside agency, then that makes it very easy for the managers within the organisations to wash their hands of any complaints that come up and say, 'It is for the CMC to worry about it, not for us.' That is wrong. It is for them to worry about. Every complaint, every issue within their organisation, is something they should be vitally interested in: firstly, to see if it is valid. If it is, then there is something wrong going on. It might be just for the individual officer, it might be the way things are approached more generally in a systemic way. It is up to them to change the culture within the organisation to correct the misconduct that is occurring. That will only happen when that is adopted as the way to go within the organisation.

There are 10,000 serving police officers and 4,000 additional staff in the QPS; in Queensland Health there are about 65,000 employees; Education Queensland employs about 85,000 people. We cannot influence all of those 85,000 officers within Education Queensland or those employees within the other departments. The ones who will influence those are management within those organisations. The tone has to be set from the top of the organisation and driven down and accepted at all levels within the organisation. That is why we as the commission are of the view that we will always continue to do investigations, and that is vitally important because there are some matters that the agencies cannot investigate. We will always have to continue to do those. They will assist in sending the vital message.

If I can analogise it with the police, the average, honest citizen is not going to come into contact with State Crime Operations Command; they will come into contact with a traffic officer. It is the same with the people working within the UPAs; they will not come into contact with us generally vis-a-vis ethics, they will come into contact with their own officers within their own organisation. That ethical culture has to be embedded from within their own organisation. Our role then is to be the State Crime Operations Command, if I can use that analogy, to do the more serious matters and within the organisation the managers have to take responsibility themselves for dealing with misconduct.

It is always going to be a challenge. I might say myself that one of the most difficult things that I have to deal with is any complaints against my own staff. I do not find them easy to do. I am sure managers within units of public administration hate having to do it and do not find it easy to do, but it is essential that they do it. It is essential that they do it. How to get that message across to the public is something we grapple with all the time. Mr or Mrs Jones out there in the community when making a complaint always feel that their complaint is the most vital thing and that the CMC should investigate it. But we cannot satisfy all the Mr and Mrs Jones's. We cannot deal with all of them. It is not appropriate that we should. I think all we can do is continue to try to repeat that message all the time, but it is not a message that the media, understandably—I am not criticising the media—finds of interest to be writing in their newspapers or putting out on their bulletins over the radio each day. It is a very difficult message to get out to the general citizen within the community.

**Mr WELLS:** Further to the last question of the honourable member for Yeerongpilly, I do not think anybody on the committee would controvert the things that you have been saying about the desirability of the administration doing the job of maintaining the standards. The tendency of what you say is not only consonant with the act but I do not think that anybody would controvert the greatest part of what you say. However, government is often a matter of getting the balance right. The public does not like to see Caesar judging Caesar. They do not like it very frequently when they make a complaint against police that the answer comes back after it has been devolved to the police.

We have had a significant number of submissions which have raised this Caesar judging Caesar issue. We will be hearing from those citizens later in this hearing. By and large, it has not been of a personal focus. Their point has been the conceptual point: how are you ever going to get justice being seen to be done if it is being devolved back to the same hierarchy that it is alleged that the injustice came from?

A number of members of this committee are really quite concerned about the fact that devolution operates in the way that it does. That is why we are interested in pursuing you even after the very articulate response which, may I say with respect, you have just given. The Caesar judging Caesar issue is a very important question. It is a question of getting the balance right.

It is not a question of resources in the end. It is going to take the same number of people to investigate a case whether those people are located in Green Square or down in police headquarters. It is of no consequence where those people are, as far as the whole of government is concerned. It is a question of what delivers the correct balance. With respect to the points that you made about line agencies keeping their act clean and maintaining standards and so forth, I am wondering whether it is possible that that duty could be effectively discharged even if they were not also the judge and jury in certain cases but merely the administrators whose task it was to keep the line clean?

**Mr Needham:** I have some difficulty with the concept that the resources would be the same. If we have John Citizen who complains that when his son was arrested there was excessive force used on him—the handcuffs were put on too tight or whatever—and that is in Mackay, we have to send investigators up there and do the investigation. They have to stay up there for the period during which they are doing the interviews. At times it requires not one visit but several because of the unavailability of people. In those circumstances, the resources are not the same.

Plus, in many ways those sorts of issues of police using excessive force are not cases where you would want to deal with it by way of an assault charge against the police officer. It is a matter of managerial action and the supervisors ensuring that their troops are doing things correctly when they are effecting an arrest. It is not something that should be done by our investigators coming in and doing a full-scale investigation and then making a recommendation for disciplinary action or making a recommendation for managerial action.

Most of those will be managerial action. That managerial action should be just taken by the managers in that area. It should not need a full investigation. It will get to a stage where citizen A is saying this and the police officer is saying that. It is one word against the other. You might not be able to resolve it.

In those circumstances, there is nothing wrong with the manager saying, 'I can't work out where the truth lies in this, but if you did do what he said then it is not appropriate for this reason and this reason and this reason.' They could get the message across in that way. 'I will not accept it happening that way in my area,' they could say. That is the way those sorts of things should happen. Very often a letter could go back to citizen A who has made that complaint, even if it says along those lines, 'Your son says this and the police officer says that. I can't resolve where the truth is, but be assured that I have made it plain to my officers that if it did occur the way your son said it did then it must never occur again.' The father would very likely be happy with that.

That is the way I would like to see things—that is, those smaller matters dealt with as an opportunity for improvement in client services all the time. At the moment, I am not satisfied that that is being done sufficiently within the QPS. I would like to see it go that way.

That is not something where we can say it is the same resources to have our officers go and do that. If the CMC came along and said to them, 'You are not to do it this way and that way,' it is not the same as their boss, their district officer, telling them that. That is where I get back to the issue of the manager setting the tone of what conduct is expected.

When we get back to Caesar judging Caesar, we get back to the point I made before of getting the message out to people that in most cases it is appropriate that Caesar should deal with Caesar. In lots of cases you will not be able to judge, but they should deal and make sure that the standards are set appropriately. As I said, I am sure in lots of cases if it did come back that way—and that would be the way I would like it—if the letter or the phone call did come back to the father that way, the father would be quite happy about it.

**Mr WELLS:** In a case of an allegation of excessive force, for example, citizen A believes that they have been done wrong and no way is citizen A, who is sincerely making an allegation of excessive force, whether it is satisfied or not, ever going to be satisfied in circumstances where the answer comes back from the superior officer or another branch of the same service. The only chance of achieving closure in these circumstances is if it comes from some other agency.

To the extent that it is an issue of resources, that does constitute a significant problem. But to the extent that it is not an issue of resources, some parts of the complaint body that the CMC receives have more concomitants than others. Some of them are more suitable than others to being handled by line management in the same agency.

I would expect that citizen A experiencing excessive force, or thinking that he has, would be, of all the instances that had ever come to you, the case where the citizen is going to be least satisfied by receiving something from higher above. Is it your perception that there are some kinds of complaints that are more susceptible to being handled by a process of devolution to the line management of their own department than others?

**Mr Needham:** Could I ask Ms Couper to answer this. She is the officer who is, at the senior level, most closely in contact with these sorts of issues on a day-by-day basis.

**Ms Couper:** I will take up the point about the complainants' approach to these things. We have commenced surveying complainants as part of our Verity trial, including the survey of complainants who have had complaints dealt with in a pre-Verity situation and also those during Verity. It is very early days in terms of the response rate and they are certainly not statistically sound conclusions.

To date the sense coming through is that people making a complaint about police in the Verity processes reported greater satisfaction than pre-Verity, but generally from both sets came the conclusion that complainants wanted to engage with the QPS to be heard, have their complaint recognised and validated and ensure that the same thing did not happen again to another person. Yes, they were unhappy with the outcome, but the fact that they were heard and were able to engage with the police seemed to be a positive for them.

The vast majority of complaints are complaints of assault. They are by far the most significant complaints. One would expect that some of these complainants are actually talking about complaints of assault. I think the experience is that the vast majority of complaints of the sort we get about police—that is, assaults, the way that the police might exercise their discretion in terms of dealing with the situation—are really the sorts of complaints that you might expect people would feel some satisfaction with if they were able to engage with the police and were able to engage with the officer in charge of the station who dealt with their boy who was in the watch-house last night or dealt with the situation that they confronted themselves far better than hearing from the CMC that we investigated it and it was unsubstantiated.

There is no outcome for them then. There is no indication that the Police Service has made any acknowledgement of what has been a concern. It is a greater sense of contact with the police and a greater sense of engagement. That seems to be being supported by what is being said by the very small sample.

It coincides with the public attitude survey about police—the view about the sorts of matters that raise concerns. It is about the more lower level sorts of matters, not the serious end of the scale. That seems to fit in with this notion of devolution for those sorts of matters which, as we have talked about before, are category B, the lower level of seriousness. Category A are the more serious ones and they are ones that we will still investigate or review or closely monitor. We reinforce with the complainant that they can be satisfied with the outcome.

Devolution is hopefully the best of both worlds. For serious matters the complainants will only accept it after hearing from the higher authority or the independent authority. That will still occur. But for the vast majority of matters that should fit within the notion of being able to engage and will work well in the devolution framework.

**CHAIR:** Could I follow on from there. Perhaps I should indicate that one of the comments from the QPS in its submission is that the trend of increasing referral back to the QPS is seen by the QPS as increased confidence in the QPS by the CMC to deal with matters professionally and appropriately. I took from that comment that the people who were undertaking the work also felt the value of what they do and how they do it was acknowledged and they were prepared to carry it out. I think there has been a suggestion over time that police dealt with their own slightly less onerously than they dealt with the public.

The officers who see it come back as a referral obviously are rising to the increasing confidence in the fact that they can do that work professionally. I think that may well be borne out by what you have said about Project Verity. Would you agree with their assessment that it does show that confidence?

**Ms Couper:** I think it shows confidence in the commission believing that local managers are the appropriate managers to deal with them. As the early indications of the evaluation of Verity show, there is still a way to go in terms of their capacity. There is the response from the early surveys of police—the rank and file officers, the officers in charge of stations and senior police—that, in terms of their capacity to deal with these things appropriately, there is still some way to go but there are some positive signs. There seems to be an increased willingness and, from the police who have responded, a support for the notion of their managers taking responsibility for dealing with them. Their view is that that will enhance integrity. But they do acknowledge, when you look at the responses, that they have a concern about the public confidence in that. They themselves recognise that that is an issue that they need to deal with.

We have quite a way to go, but the signs are very positive—even if it is only a small sample—from both the complainants and the police who are involved in this exercise. It is not going to happen overnight. It will have around it not just this process of giving a complaint to the local level but the monitoring framework, the capacity building, the performance management. There is a raft of other components to devolution which together hopefully will produce the desired result.

**Mr Lambrides:** There is an element of giving it to the Queensland Police Service so that they can prove that they can do it well. Unless you give it to them in the first place they are not going to be able to prove anything. It is a combination of both. We are very confident with the senior echelon of the Police Service of the tone at the top. Our doubts are around about the sergeant and senior sergeant level. That is where we think the biggest issue is. So now that we have the senior echelon onside, we are prepared to give them a go and to support them in their efforts to try to sell it to their troops about the benefits to them of having it within the organisation.

**CHAIR:** Your training—your partnerships—with not only police but other agencies is to try to raise the integrity, I suppose, overall of every one of those departments so that it is preventative rather than punishment.

**Ms Couper:** Yes.

**Mr Lambrides:** Yes. Can I also just go back in history. I do this quite regularly with you in private. When we used to investigate these assault type matters, they are notoriously difficult to successfully—and I use the term loosely—investigate, whether they are Indigenous complainants or whether they are white complainants or whatever. They are notoriously difficult to investigate. You were not around when we used to get the criticism ourselves about how ineffective our investigations were. So client satisfaction is not going to follow merely because we investigate it, I can assure you of that, and history shows that that is not the case. It will certainly cure the issue of Caesar judging Caesar, but then there were questions about our competence in investigating it. So you are supplanting one set of criticisms for another, largely.

**CHAIR:** I suppose it is fair to say there are a number of QPS officers who do work for the CMC, so it may well be the perception that it is still Caesar judging Caesar whether it is the CMC or the QPS.

**Mr Needham:** We do get that. Just on what Mr Lambrides said, you might have seen there was that conviction just recently of a police officer on exactly that—an excessive force one. It was closed-circuit TV. It is really only in those circumstances that you have any real chance of gaining a conviction. If it is just this person's word against the police officer's word, your chances of a conviction are pretty small.

**CHAIR:** I guess that is what courts struggle over as well.

**Mr Needham:** If I can go back on that one, it always takes a while for these matters to get through the courts. That charge arises out of a time when we were getting a lot of complaints out of the CBD area about excessive police force. Those complaints were raised with the Ethical Standards Command. They were dealt with back within the region, the Metropolitan North region. I think it is to the credit of the senior echelon there—that is, Assistant Commissioner Peter Barron and the then Chief Superintendent Peter Martin, who will be before you this afternoon as now Assistant Commissioner Peter Martin in charge of the Ethical Standards Command—that they recognised that there was a problem. They looked at it. They changed the message that they were getting down to the troops as to how they were to police within the CBD with these drunks late at night, which is notoriously difficult to police. I would not wish to be in the police officer's shoes, quite frankly. But they got the proper message down to their troops as to how this was to be done and the complaints numbers just fell away and that is now no longer a problem within the CBD. That is the way it should be. The mere fact that we have now, some couple of years later, successfully prosecuted one of those constables or senior constables would not have stopped it. What stopped it was the fact that the QPS management took on board the fact that it was an issue and they set the tone within their own organisation as to how this work should be done. They changed the culture of policing within the CBD and they have stopped that problem. That is a prime example of the way it should work.

**Mr Lambrides:** Can I add one further thing in relation to the Caesar judging Caesar issue. The commission has not been very good—and I am largely to blame for this—at publishing monitoring results, that is, when we do audits, when we do quality assurance reviews and when we do reviews of individual matters to tell the public what the general picture is. We have not been very good at that, and that is probably because we have not even to this moment really worked out ourselves how best to measure it, how best to publish it, how best to do these audits. We have worked very hard on that in recent years and our focus for the next four years will be very much more on this monitoring and, I think crucially, reporting on our monitoring. If we can report that we have confidence and these are the reasons why we have confidence in the service or whatever other agency we are talking about, I think that will go a long way to addressing the issues of the perception of Caesar judging Caesar. So a lot of it comes back to us publishing those aspects of our work better than what we are doing at the moment.

**Mr Needham:** I would like to think Mr Lambrides is right, but I do not know. It is not 'sexy'. It will get a little article in the *Courier-Mail* and, quite frankly, Citizen A who has not got any problems in these areas will not read it or, if he reads it, will forget it and two years later when suddenly he has that issue about his own son or himself with a complaint about excessive force he will not remember that and he will have his concern at that stage that his complaint should be investigated by the CMC. I suspect it is going to be like death and taxes: it will always be with us.



**Mr Lambrides:** I am more hopeful.

**Ms Couper:** And so am I. We have thought about a number of ways of actually communicating on an ongoing basis with complainants ranging from our regional visits and holding public meetings through to having brochures, through the web sites and various other forms that might be brought to the attention of the individual when they make a complaint. But, yes, whether or not they accept it is another thing. But we have some thoughts about those strategies.

**Mr DEMPSEY:** I have a bit of a statement rather than a question. Noting the submission and referring back to what the member for Yeerongpilly and the member for Murrumba said in relation to devolution and linking in education of the different departments all the way through as well as resources, if you took on board every complaint of the CMC and went through them it would be near impossible. You have to put that out and be realistic with the resources provided and give confidence back to those people who are running the department that they have structure and control of those departments. We also have to consider the fact that a number of police who have actually worked for the CMC and the CJC previously, Ethical Standards and other sections of the Police Service are now working for these other government departments—police, health, workplace health and safety and so forth—who have knowledge and understanding of your investigations. I have concerns that that can be then put back into, for want of a better word, CMC-speak and your investigation procedures. Obviously that will create a perception that everything is going great at the top but does not necessarily address the problem.

Back to the issue of devolution again, sometimes the public perception of the CMC can be, using the crudest example, that there is a big stick hanging over them. If something happens, they have the authority and so forth to investigate anything. If that is diminished in a way, it will take away from the perception that departments are then controlling themselves. With that, we look to the Verity cases as well in terms of police statistics with regard to satisfaction. Those statistics only go back to CMC/CJC times. They do not go back to Fitzgerald times as to how police were dealing with the general community at that time. Now that we are looking at just CJC and CMC procedures, there is a concern that people will then think that are we going full circle. I know we have a completely different Police Service, different health department and so forth, but we are doing a full circle back to giving them authority and in some way, because of maybe a resource issue, we are actually taking that power away from the CMC. That is my statement. The question is: where are we going for the next 12 months, the next four years and years to come for the CMC to be placed back up there as an overview body in terms of looking down the pyramid?

**Mr Needham:** We will always maintain that big stick, as you referred to it. We will always maintain it, and I think that is important.

**Mr DEMPSEY:** I did not know how to say it in Latin.

**Mr Needham:** Biggus stickus!

**Mr Lambrides:** Maximus.

**Mr Needham:** Stickus maximus. I think it is important to always have that body like the CMC that does have those powers that can come in and is that ultimate one that is there. But where I would like to see it go over the next four years is to continue this process to get to the stage where the matters that are now being sent back—the QPS are talking about the increase. I do not know whether, if we looked at the figures, the increase is that much greater over the years. Certainly in the four years I have been there, I do not know that we have increased the number of matters—percentage of matters—we are sending back to the QPS. It would be the same sort of percentage as it was when I first came there, which is really out of necessity. But what I would like to see is that how they deal with those is now in a way that is working well so that the people who come into conflict with them as complainants go away with, if not total satisfaction, at least, as Helen was saying, the feeling that they had their day, they had had their hearing and that they had been listened to. I think that is the best we are ever going to get and, as part of that process, it is improving the ethical standards and the conduct within the departments of the officers involved, whether it is the QPS, of the troops on the ground. That is the way I would like to see it go in the next four years. I do not think it is going to go back to the pre-Fitzgerald style because, as I say, the CMC will still be there and we will have that big stick and we will still be viewed that way.

**Mr DEMPSEY:** Even just on the ground from your case perspective. In terms of general policing, obviously they feel more comfortable that they have not got that perception of the CMC that they cannot say anything or do anything for fear of repercussions. So there is a bit more relaxation there, but coupled with that relaxation—

**Mr Needham:** There is a danger.

**Mr DEMPSEY:** Yes, things can be pushed aside and the 'She'll be right' mentality comes through.

**Mr Needham:** That is where it needs the QPS to be taking up that slack all of the time so that same drive for proper conduct is coming from within the supervisors within the QPS. If we did not have that and we had the lessening of the effect of the CMC, then there could be, I accept, a turning back of the circle.

**Ms Couper:** A very important part of all this is the monitoring framework. We will always maintain a monitoring framework, as will the Ethical Standards Command, within the service, and that is a very important part of ensuring that less fear does not turn into a sense of, 'I've got no worries at all. I can do anything I want to.'

**Mr DEMPSEY:** Is the computer system adequate for what you need?

**Ms Couper:** It has improved in its functionality, but it still is a way short of what ideally would facilitate this process. But we have been working on that with the QPS.

**CHAIR:** That is a monitoring issue. I think Mr Finn has a question, but I just have one question, and if I have read something about it I have overlooked it. What is Project Ice? It is supposed to be part of Verity but it is proactive.

**Ms Couper:** Originally Project Verity was the umbrella project which had the 'dealing with' component and 'prevention' component. Project Ice was the integrity scan of the Police Service—which was conducted a couple of years ago at least now—within the Research and Prevention area.

**CHAIR:** But there is no current action under that to—

**Ms Couper:** No, not as far as I am aware.

**Mr FINN:** We have mentioned that we have received a submission from the QPS and we have not had an opportunity to speak with them yet. Their submission makes a number of comments about the professional relationship between the CMC and the QPS but, like all good friends, gives some constructive feedback as well.

I would like to give you an opportunity to comment. The QPS raises three main issues. There is an issue of timeliness in the referral of matters from the CMC to the QPS. That leads into a delay in their investigations beginning. They raise concern about overevaluation in the initial assessment phase, which they say can lead to multiple allegations, or duplicate allegations. They refer to a tendency for the CMC to classify allegations at the highest possible level as opposed to a level that might be based on the available facts. I am going to be keen to ask the QPS when they meet with us to provide some more detail about that. I just wondered whether you would like to take the opportunity to make some comment about that.

**Mr Needham:** I might get Ms Couper to make some comments, but, firstly, the timeliness surprises me. I had not heard of that as a problem at all. We have section 40 referrals—directions with them. So except for the most serious matters they can just get started on them straightaway.

**Mr Lambrides:** Can I add something to the timeliness aspect? I go to morning prayers, as it is called, every Wednesday with the Queensland Police Service and in that time sometimes delays in our referrals to the Queensland Police Service are brought to my attention. I invariably bring them back to the commission and make inquiry as to why that is, because it is important, especially in assault matters, that there is virtually no delay. On occasions we make preliminary inquiry ourselves in determining whether we should send it back to the Queensland Police Service. That takes some time. There will be times when we, if it is an Indigenous complaint, run it past our Indigenous Complaints Assessment Committee. In fact, every Indigenous complaint goes through that committee. So that does tend to delay it somewhat. There will be occasions where we get it wrong; it falls through the cracks. I have asked my staff in all circumstances to document why there is a delay when it goes back to the service so that the service knows, 'There is no further information that we can give you. We stuffed up on this one.' We are honest with them and we expect them to be honest with us. It is a bit painful doing it on a case-by-case basis, but unless you build that trust you cannot expect them to be honest back with you and take steps themselves to remedy these issues.

Generally, though—and Helen might have more precise figures—the turnaround is a lot better than what it was. There might be still some room for improvement, and it is something that we are focusing on, but it has certainly improved. Helen might have some further figures.

**Ms Couper:** It certainly has improved. If I can also add: we have weekly meetings with the ESC. So if there is any particular issue that they want to give priority attention to, they can tell us at that meeting. There is constant phone contact, on a daily basis, about matters.

The assessments have improved. Just looking at the last couple of weeks, for all matters except for the more serious ones, which take time when we do some preliminary inquiries, 100 per cent were delivered to the Police Service within 10 days, and for the very low level it was 100 per cent within the first five days. So more often than not they are with them pretty quickly. We have talked about expanding the section 40 directions to ensure that even more can be dealt with by them straightaway. So there are any number of processes that we have been working with them on to ensure timeliness. As Steve said, from time to time things slip through the cracks.

We have also seen some things slip through the cracks in terms of the IT system and the referral between the two agencies, and that has been picked up recently as well. So we are constantly, on both sides, pretty vigilant about trying to make sure that things are timely.

We had our CMC-ESC full-day forum recently where we sat down and thrashed out a lot of these issues. We gave a commitment—both sides—to have working parties to see if we can further enhance these processes. So we are constantly working together to try to improve these things.

**Mr Lambrides:** I think the important thing to come out of this is that we are very much focused on timeliness. As I have said to you over a long period of time, justice delayed is justice denied. So it is critical for the benefit of the subject officer, the complainant, the manager and the work area that we deal with these as quickly as we possibly can. I speak of that to both our own staff and when I go around the state to the Police Service. I say that to them as well. So it is a lesson for all of us.

**Mr Needham:** I will ask Ms Couper to deal with the other two aspects of overevaluation and classification at the highest possible level. Sorry—

**CHAIR:** No, you are right—

**Mr FINN:** They are only one-third of the way through answering my question.

**CHAIR:** Perhaps we can deal with the other two-thirds and then I will make my comment.

**Ms Couper:** In terms of the overevaluation and multiple allegations, we identify those issues that the complaint suggests to us. We distil from those pages of complaint what we think the issues are. I must admit: I had not heard of that being a concern. It has not been raised for a long time. It was a long time ago. We do see when we do reviews and audits that sometimes police officers actually miss issues. So the whole idea of making sure we capture all of those issues in the multiple allegations is to make sure they are directed towards the appropriate concerns and address them.

Part of the problem used to be—and also with this highest classification level—that they seem to be concerned that, because we say, ‘This allegation involves possibly official misconduct,’ the more allegations of official misconduct there are, the more concern there should be about what is happening in the Police Service. That seems to be what causes the problem, as opposed to saying, ‘There is an improvement in official misconduct. These are just allegations. These are directing you towards how you need to deal with the matter and how you might approach it,’ as opposed to us saying, ‘The bigger the number of allegations, the more concern we have about what is going on with this particular matter.’

With the two audits that we have referred to in the report, and the breach of discipline audit particularly, we went through and explained that whole process of why we classify at particular levels, recommendations about how to go about that and the purpose of it. They have had that report for some time and, again, we have talked about going through those issues and explaining and working through any concerns they might have about that.

Classifying at the highest possible level, again, is not to speculate about what it might involve but to have regard to the facts and circumstances as presented by the complainant in the light of any policies and procedures we are aware of and, if that is proven at its highest, what it might involve. On that basis we make the call about whether it is something we should actually look at or it is appropriate for the service. So that is the purpose of that exercise—not to try to elevate unnecessarily or in an unwarranted way a concern that the Police Service is, in fact, guilty of what is in that case official misconduct rather than a breach of discipline.

**Mr FINN:** Is there a cultural disconnect between what you see as a serious matter and what they may see as a serious matter?

**Ms Couper:** There may be some differentiation between what they see might be a breach of discipline and what we see as misconduct but, again, I see that as coming from that perspective. In fact, one of the things we talked about is whether at some stage down the track you might actually eliminate the distinction between the breach of discipline and misconduct and deal with the conduct. At the end of the day, you are dealing with the conduct, as described.

**CHAIR:** You have a third one?

**Ms Couper:** That wraps it up.

**CHAIR:** I think it is fair to say that part of the submission actually reflects that. It mentioned referring misconduct matters to the service to be dealt with as the CMC directs. But then it goes on about the ESC and the CMC audit and review and how complaints are dealt with and that breaches of discipline are the responsibility of the regions, commands and directorates and are dealt with and finalised at the local regional level and only the outcomes of those complaints are recorded in the ESC. I think they are reflecting in that that they have concerns about the difference between the breaches of discipline and misconduct.

**Ms Couper:** And that will be eliminated more so with devolution.

**Mr Lambrides:** Section 40.

**Ms Couper:** With section 40 and devolution. In fact, the local level managers will be taking responsibility for the vast majority, whether it is breach of discipline or misconduct.

**Mr Lambrides:** Can I add that recently we did an audit of breaches of discipline to see whether they, in fact, were truly breaches of discipline or whether they were misconduct of some sort. My biggest concern was not whether they miscategorised them, but if they had undercategorised them they did it for a specific reason—so that they did not have to report to us—and there was no suggestion of that at all. That was comforting to know—that even though they may not categorise it the same way as we did, it certainly did not indicate that they had miscategorised it on purpose to get some kind of advantage.

**CHAIR:** The submission is reasonably glowing in terms of the relationship between the CMC and the Police Service. They are the only specific matters of concern that they raise. I think they also have benefited greatly from the assistance provided by the CMC.

**Mr Needham:** I am pleased to hear that, because that is the approach that we like to take with all senior officers in all units of public administration—that we do not see it as an adversarial approach; we see it as an approach where we need to work together to achieve the outcome that we all desire.

**CHAIR:** Yes. I do not have any argument with that. Is there anything else that anyone else wanted to raise? We do not have anything more just at the moment but, as we indicated, we have a number of other people who will be supporting their submissions. I realise that puts a lot of your senior staff out of the office, but I invite you to listen to any of those. As I said, we still have to determine whether we have subsequent public hearings or not.

**Mr Needham:** Would I get another opportunity to make comments to you tomorrow?

**CHAIR:** Yes.

**Mr Needham:** In those circumstances, I think it would be advantageous if we stay here and see if we can assist you tomorrow with any comments or answer any questions that you have coming out of what the other witnesses say.

**CHAIR:** Thank you very much for that. Hopefully, that will assist us in our deliberations. We will adjourn for lunch now until two o'clock.

**Proceedings suspended from 12.56 pm to 2.00 pm**

**ATKINSON, Commissioner Robert, Commissioner of Police, Queensland Police Service**

**MARTIN, Assistant Commissioner Peter, Ethical Standards Command, Queensland Police Service**

**CHAIR:** We will reconvene. Once again we are slightly late, owing to a decision that was made in relation to submissions. We had not actually tabled submissions because of the short time frame. We have resolved that, at the end of the evidence or discussions with individual witnesses, we will publish those submissions which will be the equivalent of tabling. You have no objection to your submission being tabled?

**Commissioner Atkinson:** No, Chair. In fact, we would have made it available to the CMC, but we did not feel it was appropriate given that really it is your document and it is your decision as to whether it is made available or released publicly.

**CHAIR:** Thank you very much, Commissioner. I welcome Commissioner Atkinson from the Queensland Police Service and Assistant Police Commissioner Peter Martin, who is in charge of Ethical Standards Command. Perhaps if we could get proceedings underway. Commissioner, you may make a short opening statement in relation to submissions and then we can discuss any aspects that you want to discuss in depth.

**Commissioner Atkinson:** Certainly.

**CHAIR:** Perhaps 10 minutes?

**Commissioner Atkinson:** Thank you, sir. I might even be less than that as I have only three points. The first is to give our unqualified support for the CMC and the importance of its role. As everyone is well aware, next year in July will be the 20th anniversary of the release of the original Fitzgerald report, as it is more commonly known. One of the things we are mindful of is slippage in the police department. We never ever want to go back to where we were pre-Fitzgerald. I do not believe that we will. Certainly I do not believe that there is any remote nexus to that possibility at the present time. However, we are very supportive of the role of the CMC and that expanded role since the creation of the CMC from the CJC and its various component parts, be they the misconduct division, the crime investigation area, the research area, the intelligence area. Whatever the component, we are supportive of it. In terms of reassuring public confidence, I often say that a particular matter where police are complained about will be overviewed by the CMC. I think it is important to be able to do that.

The second point I want to make is that our submission touches on some matters that we think are issues for us at the moment. Please do not in any way take offence at what I am about to say as it is not meant offensively, but I was not asking your committee to intervene or to address those matters. They are simply put forward. I guess it is inevitable that between two large organisations, especially agencies that are involved in the work that they do and the nature of it, there will not always be complete harmony and agreement. In fact, it could be argued, I think compellingly, that if there were universal day-to-day complete agreement on every point that would be an unhealthy thing. In the spirit of ongoing discussion, consultation and negotiation, we will continue to engage with the CMC about those matters. Please do not think that we were trying to pass to you anything on their behalf.

**CHAIR:** From my point of view, and I know from that of most members of the committee—I have not spoken to a couple of them who are not here today—that was not suggested. We all appreciate that, as you say, within a big organisation and even between friends there can be differences. Perhaps it is a difference in perception; perhaps it is a difference in action. Certainly no offence is taken.

**Commissioner Atkinson:** Thank you, sir. The third area is really more of a broad observation, I suppose, that again I would ask you not to solve for us, but perhaps if I could bring it to your notice and no doubt you are aware of this. At any time, but particularly with the pending 20th anniversary of the Fitzgerald inquiry, I guess the integrity and professional health of the police department is obviously an ongoing issue. It seems to me that with a large police department—and, indeed, the Queensland Police Service is a large police department, especially by English-speaking Western world standards. It is one of the largest in the English-speaking Western world and a unique one, too, given the size of Queensland geographically, its decentralised nature and the range of issues that the department has to deal with. It has 14,000 people and 10,000 sworn officers. It just seems to me that the department can only be in one of a number of states insofar as corruption, misconduct and professional integrity goes.

The first, and the one that existed pre-Fitzgerald, was that there was systemic institutionalised corruption at high levels in the organisation. I do not believe that is the case at all in any area at the present time. The second is that as the commissioner I would not say to you that there is no corruption or misconduct in the department at all. I would not expect you to believe it and I would not believe it, and I do not think it is possible. It would be a utopian situation that is not going to exist. The third is that there are isolated examples of both corrupt behaviour and serious misconduct. I think that what is important there is that those things are identified and appropriately dealt with.

In each respect the things that need to be looked at in determining, I suppose, the degree of weight and concern that should be attached to it are things such as the nature of the incident, the motive of the people involved, how it came to light, whether there were attempts to cover it over and, again, whether it

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was widespread, the number of people involved—those sorts of things. With 10,000 police—and I do not think there is any research at all that identifies what is a likely level of corruption and misconduct that would be identified in any large police department—it seems to me that it is important that these things are identified and dealt with. As long as the quantum of that activity is not excessive, that is probably the best you can hope for. But I am happy to debate and discuss that, or receive any differing views. Can I just ask Assistant Commissioner Martin if he has anything to add to that, and then really we are at your disposal and look forward to any questions that you may have for us.

**CHAIR:** By all means.

**Assistant Commissioner Martin:** Thank you, Chair, and members of the committee. It is very satisfying to be here and to give you somewhat of an overview in terms of the relationship that we have with the CMC but also some of the challenges that are posed for a large policing organisation. I support the comments made by Commissioner Atkinson in that regard.

Certainly my view is that ethical standards, professional practices and integrity systems in a large policing organisation in the Western world are to some degree a race without an ending. It is a constant battle to make sure that we have good systems in place both to identify corruption and to encourage people to report and meet their statutory obligations, but more important are the things that we are doing for the future. The best indicators of the challenges for the future are the things that are occurring now. We try to envisage the things that are likely to pose tensions in the organisation in this regard into the immediate future. With regard to things like research, the importance that we place on research is incredibly high. That is where we leverage support from the CMC with respect to useful and important research initiatives to identify the things that we need to be doing, not only in the next month and next year but also in the next five to 10 years. That is where the game needs to be played.

There are some other innovative things occurring at the moment. These generally fall into three categories: the things that we know work, the things that do not work and the things that really look promising. One of the things that fall into the category of really looking promising—at least to me—is the identification of at-risk officers and at-risk work units within policing agencies. The work that we are doing there and the work we have done over the last five years, in particular, much of which is with the CMC, is incredibly promising for the future in terms of preventing problems from manifesting themselves and getting worse, and identifying issues in the background of an officer that might cause a break in a certain form of behaviour. Those things are incredibly optimistic, as I said, in terms of changing behaviour for the future. That race is very much one of prevention, it is very much one of detection and it is very much one of a commitment to research to identify the things that we need to do for the future. With those few opening comments, again, my thanks for the opportunity to be here.

**CHAIR:** Thank you, Assistant Commissioner. As I said in my opening this morning, we are charged with overseeing the workings of the CMC. This three-yearly review is designed to try to finetune the act and the CMC's requirements in its dealings with the QPS to ensure that it has the very best method of assisting you. For myself personally, it is fair to say that I hear and I support the comments of both of you that the Queensland Police Service has come a long way. From my own point of view, being a native-born Queenslander, as are many of us, I think that that is only for the good of the state. Hopefully we can help with that in this review and help the CMC.

However, the thing that taxes us most—and I know that this is very closely monitored and looked at—is the overall consideration of devolution, not from the point of view of everything that is done but more from the perception of the public in terms of what it is and how it is done. I do not know whether it is entirely possible at any stage to get 100 per cent of the good work across to members of the public because there may always be certain members of the public who feel that, no matter what is done, it is never, ever going to be good enough. In your submission there were some matters that, as the commissioner said, were made in good faith between organisations that are trying to make things work very well. Overall in your submission there was very appreciative comment regarding the standards and what has been reached. As I said, I personally know the standards that have been reached because I do have quite a bit of contact with the commissioner and senior commissioned officers in another area. Therefore, if we can just address those things, if there are things that it is necessary to look at in terms of protocols or so on, we may be able to deal with those sorts of things. It is really up to both the QPS and the CMC to resolve those, but hopefully we can work on those building blocks.

**Commissioner Atkinson:** Could I respond initially?

**CHAIR:** Yes.

**Commissioner Atkinson:** Certainly if it ever got to the point—and it is not anywhere near it at the moment—where we felt that we were at loggerheads with the CMC, there would probably be a need to go to a third party. Your committee would be the obvious choice for that. While I think we are certainly a long way from that, we would need to reserve the right to say, 'If it's okay, could we reconvene or could we both appear before you and identify an issue?'

It is a vexed problem, if I can move to another area that you raised, Chair, which is that the public perception at times can be, I guess, that the things are not as good as they might be. It is a very healthy thing that the CMC refer matters to us for investigation and then later review them. Sadly, I do not think we have precise figures for you, but we may be able to get them. I do not know that we keep records of how

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much is referred to us from the CMC and how much of that, when it goes back to the CMC, is subsequently unaltered. They would be interesting statistics in terms of the volume of material the CMC receives, how much of that they refer back to the service and, subsequently, what proportion of that the CMC accept in terms of the way that the service has managed it. Maybe that is an area of research that we should follow up on.

**Assistant Commissioner Martin:** My sense of that, Chair, is that that is an incredibly high figure. In terms of the totality of the matters that are exchanged between particularly the Ethical Standards Command as the conduit from the Queensland Police Service into the CMC, there were very few matters that we have disagreement on. By far and above, with the investigative methodology that we employ in the vast majority of cases there is agreement on the outcome that is determined. We accord in terms of the things that we have done with the demands of the CMC. At times the CMC has a different expectation or would like to see a different outcome with respect to a matter. When that occurs, they advise us of that by one of a number of different methods.

**CHAIR:** You have those regular meetings that endeavour to deal with any issues. I think one of the issues that has emerged, not only today but also it has been raised before, is the difficulty in determining the level at which something would come back to the Police Service. In terms of misconduct, is it serious misconduct, is all misconduct serious or is it not misconduct but a breach of discipline? I think they are the areas where it appears to me there is still some difficulty, although perhaps I should not use the word 'difficulty'. In the classification of where stuff comes from the CMC when the Police Service is required to do certain things itself, obviously a breach of discipline that does not constitute misconduct is certainly an operational matter for the commissioner and other commissioned officers.

**Commissioner Atkinson:** Do you mind if I ask Mr Martin to speak to that first and then I would like to add some comments.

**CHAIR:** By all means, Commissioner.

**Assistant Commissioner Martin:** It is certainly evident to me that the CMC wants a further tier of classification that we feel to some degree uncomfortable with—that is, breaking up misconduct into not only misconduct but also official misconduct. For us the line between breach of discipline and misconduct is reasonably clear. I know the CMC wish to break misconduct up further and I know the CMC do that internally. But, at the end of the day in terms of our purposes internally, the fact that we have made the classification—that we have drawn the line appropriately between breach of discipline and misconduct—is for us of paramount importance. The tier beyond that, in terms of criminal, is for us a reasonably simple determination. But we go through a range of processes beyond that, in some cases requiring discussion concerning the sufficiency of the evidence and what have you. At least to my mind, it is the issue of breaking up the classification of misconduct—in terms of misconduct, police misconduct and further official misconduct—on which we have a very different cultural view.

**Commissioner Atkinson:** Our understanding of the CMC view, which we acknowledge, is that matters should be classified at the highest possible level of offending or alleged offending. Our view is that they should be classified at what is a sensible, realistic and practical level of offending. Regardless of that, my understanding is that the vast majority of material still comes back to the Police Service regardless of the classification.

**Assistant Commissioner Martin:** Correct.

**CHAIR:** The query in my mind is that sometimes it is not possible to classify it at any level until you know the facts. You may only have a limited amount of information or facts initially. How do you quantify it at any level before you have those facts? Surely there needs to be some way that those facts can be taken into account in terms of the determination of what level it should be.

**Commissioner Atkinson:** With respect, I do not think that would be possible because initially the matters are allegations and the facts can only be determined as a result of the investigation. While Mr Martin may say, 'This is official misconduct that borders on criminal,' it could be that after a full investigation it is completely unsubstantiated. So it is really difficult. I understand fully and you are quite right. But until the investigation is completed it would probably be impossible to know all the facts.

**Assistant Commissioner Martin:** It certainly is. One of the issues that is at the forefront of my mind is not forming a view too early with respect to the full quantum of things that might unfold from certain allegations or a certain type of complaint up-front. We stress upon investigators to keep very much an open mind. It is not beyond the realms of probability that what happens is that you will start with a particular allegation or a particular set of circumstances and it morphs into something a little different, a little more complex, and that can happen.

**CHAIR:** That can happen in any investigation though, can't it?

**Assistant Commissioner Martin:** Very much so.

**CHAIR:** It starts out as one thing and then it is like Topsy—it just grows.

**Commissioner Atkinson:** Absolutely.

**CHAIR:** I think most of the committee members are aware of that.

**Commissioner Atkinson:** Yes, it can go either way. It can diminish into something that really is nothing at all or it can be found that there is more to it than there was initially complained about.

**Mrs SMITH:** Commissioner, we have spoken at length as a committee about devolution. It has shown that more and more referrals are going back to the QPS for your attention and investigation. Does that impact on your resources and your capacity to investigate and does it have an impact on operational policing?

**Commissioner Atkinson:** It certainly impacts on resources. It is important that investigations be completed as quickly as possible. There is always a balance between doing it as quickly as possible and doing it fairly, thoroughly and professionally so that everyone is fairly treated. My sense of it is that where the community complain, where a member of the public complains—and this is something that I think both organisations are mindful of and are working towards in an ongoing sense—quite often the member of the public would simply like the police officer to apologise and to acknowledge the rudeness or the impropriety of their behaviour or whatever and just get on with it. That is something that I do think is being addressed. So it is always a balance. I think, though, that this area is so important because our operational effectiveness will be determined by the support from the community. The reality is that there is one police officer for every 430 or 450 people in Queensland.

**CHAIR:** 458.

**Commissioner Atkinson:** We have not got all of the police working all of the time. So at any given time there might be one police officer for every 1,500 people in a community. You cannot do the work without the support of the community. Certainly across every dimension that is the case. Public confidence is critical. Public confidence will only exist if they believe the police force is substantially clean and that when things do go wrong they are investigated properly. Whilst it is resource intensive, I think it is unavoidable that we would have to put the resources into this area.

**Mr FINN:** Commissioner, I would like to come back to the classification of allegations. It seems that there is a bit of a disconnect there. I do not want a police officer feeling like there is a very serious allegation against him if there is not. But I also want a CMC that has an ability to classify an allegation as serious or not. They do it on the allegation; you do it on the investigation. It seems to be a significant point in the submission that this has the effect of overinflating the seriousness of allegations. Is this a significant disconnect or isn't it? How do we work this out?

**Commissioner Atkinson:** What I would hope is that we can have ongoing dialogue between the CMC and the QPS. It may be that at the end of the day we simply report back to you and say that we cannot reach agreement and that we still have our independent and separate views. I understand the CMC's view—I believe I do. My understanding is, as I mentioned a moment ago, that the CMC's view is that it should be classified at the highest possible determination, whereas our view is that it should be classified based on what is a practical, likely, factual assessment based on what appears to be the case. I probably cannot take it much further than that at this stage. If the committee is agreeable to defer that particular matter, perhaps you could allow us six months or so to see whether some agreement can be reached or not.

**Mr FINN:** I understand it. It is difficult to say that your position is that the CMC should classify it on the available facts when you actually investigate the facts yourself and they receive it as an allegation and, prior to investigation, need to work out its seriousness. There is also a natural response, I guess. I have suggestions, allegations if you like, come into my office from people and there is a natural reaction as to how serious they might be before you even look at the detail of it. I understand the difficulty.

**Commissioner Atkinson:** I suppose one way to do it would be to look at the way it was classified in the first place—this would take a bit of work—and look at the end result and take a sample of 10 per cent or something and see what the actual disconnect proved to be. But, in fairness to the people who make the assessment, I suppose it is just an assessment, isn't it, initially?

**Mr FINN:** There is also reference in the same section to an overevaluation of complaints at the initial assessment phase.

**Commissioner Atkinson:** I thought we were just talking about the same thing.

**Mr FINN:** It is the same thing?

**Assistant Commissioner Martin:** Yes, it is.

**Mr DEMPSEY:** I think the member for Yeerongpilly was alluding to the multiplication—having a number of complaints about the one person and it might be the one incident. It is about the nuts and bolts at the beginning—not the classification of discipline, misconduct or official misconduct—of refining the process so that if complaints are made by a number of people there are not a number of assessments. It is about simplifying the process, basically.

**Mr FINN:** One is about the classification. The other one is about the reference you make to 'overevaluation initially can lead to multiple allegations recorded and duplicating assessments' which, in turn, heightens its classification potentially. It was more mechanical at the initial stage is what I took from your submission.

**Commissioner Atkinson:** I do not know what the criteria is that is used by the CMC to make the assessment. I do not know what degree of time and effort goes into that. That would be an interesting point—from the point at which the matter is received at the CMC to how long the classification takes to ultimately whether the outcome matches the classification. But that could only be done through some research. It would be up to your committee, with respect, to determine whether you wish that to occur.



**Assistant Commissioner Martin:** I just make the point with respect to that issue that the initial classification is incredibly important in determining jurisdiction. Breach of discipline is the commissioner's responsibility. He delegates that to me and I look after that on behalf of the organisation. When it comes to official misconduct at the other end of the departmental extreme, the CMC have jurisdiction with respect to that. The vast majority of those matters are referred to back to us.

For me, the initial assessment is incredibly important to determine jurisdiction, but after that the direction of the investigation is my determination internally and then subject to whatever demands the CMC might place upon us if they have jurisdiction with respect to official misconduct. For example, if they sent it back for investigation they might say to me, 'We want advice before you take any action.' Alternatively, they might say, 'We want advice after action is taken,' or whatever other requirements are placed upon us. So I want to make the point that there is the jurisdictional issue at the front end and then there is what happens after that. That is where the game needs to be played, at least to my mind, in terms of what happens. That a full and thorough investigation occurs and that we meet our obligations to the CMC are important dimensions of this.

**Mr DEMPSEY:** Devolution is a word that always comes up. You probably hear each member saying the same thing and each organisation probably has the same dilemmas. It always reverts to perceptions and public confidence and so forth. Obviously there has been an enormous increase in community confidence in the CMC as well as in the Police Service. From deliberations that we have had, we would like to always be on the front foot, to keep ahead and to make sure there is no digression. No doubt we will talk about Project Verity and the success of that and how that is going, even in its infancy, and how that will affect the public's confidence or perception in relation to complaints and devolution—Caesar judging Caesar. People need to have confidence that those matters are being investigated. A lot of the figures we have are from the CMC and CJC period but not from the pre-Fitzgerald period. We do not want people saying that they are going to the police, the police are investigating it and so forth and then have the community turn around and say, 'These allegations aren't being taken seriously,' when everyone here in this room knows that they will be. Is the QPS endeavouring to address the public perception that that may happen in the future?

**Commissioner Atkinson:** As the chair said, there will be some people of course who will never be happy, given their personal circumstances, background and nature of the complaint. I think really the ball is in the court of the police department here. With the lower level matters, Verity can work and it is an opportunity for the police department to enhance public confidence.

Again, if I could use this example: the sort of thing is where a police officer has clearly acted inappropriately—but we are not talking about criminal behaviour or corruption—and there is perhaps a recognition of that, an apology and, if need be, some remedial action, and that happens quickly and the member of public is informed of that quickly. It will ultimately, I guess, in significant part be the middle-level managers in the police department—the sergeants, senior sergeants and inspectors—who are responsible for determining how well that is done at the coalface where it is really happening, whether it works, whether the level of public confidence improves and whether the CMC can be satisfied that we can be entrusted to continue to do that. I think that is yet to unfold fully, but I hope it does. I think, as Mr Martin mentioned, there is no finishing line with this. It is constantly evolving.

**CHAIR:** It is a work in progress.

**Commissioner Atkinson:** It is, and this is a very important next stage of it: this devolution down to the local middle management areas. Do you want to comment, Mr Martin?

**Assistant Commissioner Martin:** Most certainly. The issue of devolution is an important one for us. I mentioned before there is a natural way into the future, and for me this devolution is certainly the way to go for the future. I say that for a number of reasons. If I could paraphrase my comments in terms of my view—that is, devolution is one edge of a doubled-edged sword. Yes, you get devolution and that is a great thing for the organisation, but it comes with great responsibilities and accountability and we need to make sure that we build that in, and Verity is about building that in and not losing the rigour that we have at this particular time.

One of the things that offers me great hope for the future in terms of Verity—and Verity is a true CMC-QPS partnership, and in that regard it is a really good example of how the relationship can work and work productively—is that my view is that any outcome that achieves the same level of rigour and accountability but does it in a quicker time frame is a terrific thing. It is a terrific thing for the public and therefore it is consistent with public interest, it is a terrific thing for the officer and, in terms of the issue of justice generally, it is a wonderful innovation from where we are at this particular stage.

I think it is not different to the process that is employed at the moment in terms of it is still the police taking primacy for the investigation. It will happen in a much quicker time frame. The problem that we have at the present time is that by the time it works an investigation—particularly the more serious types of investigation that are long and laborious and what have you that can take six and 12 months to come to finality—we create in the minds of the complainant an expectation that if you have had it for six months you are going to achieve a really terrific outcome, and that may not necessarily be the case and you get that disaffection.

So my view is that Verity is a terrific tool to push down the vast majority of discipline where it should belong, and that is down to the work unit, the district level. It puts managers and supervisors back and accountable in terms of the management of their people, and it gives the general public and other officers who are complainants in matters a more timely outcome for this matter, but it does not lose the important issues in terms of oversight, and that is incredibly important. Of course, there are other tiers of oversight. There are tiers of oversight within the organisation, including my command—the Ethical Standards Command—and there is oversight in terms of the CMC.

**Mr DEMPSEY:** As far as time frames of investigations and obviously lengthening those periods that can create a false perception within the community—I had better be careful I do not put pressure on either department here—are there any enhancements in software and computer systems that would help relieve that?

**Assistant Commissioner Martin:** We currently have a complaints management system that is working reasonably well for us. I am not saying that it will be in place forever and a day, and there are probably a lot better products and what have you. I would say it will probably change and morph over a period of time, but the CMC have access to their complaint management system in real time. They can interrogate that and look at that system, so for complaints management I am reasonably comfortable that we have a robust system in place.

The lengthy part of an investigation is the face-to-face interviewing of people, the transcription of tapes, the investigation report, the consulting with experts for expert opinion and those types of things. In a lot of cases, you also have the pressures of an officer who might be on sick leave, witnesses who are difficult to track down or witnesses who change their mind over a period of time or change their version—all of those things impact on an investigation and to some degree they elongate the investigation much, much more than we would otherwise like. Of course, there are times where an investigation is long and laborious given the amount of people we have to interview and there are just no short cuts for that and software will not assist us in that regard.

**Mr DEMPSEY:** We had a look at New South Wales, and what was the name of the product they use?

**CHAIR:** C@TSI.

**Mr DEMPSEY:** Yes, C@TSI, and the speed in which they are able to utilise that process and then use that as an intelligence purpose to help identify the problem and address things later on down the road; it might be managers, middle managers.

**CHAIR:** I think Western Australia has a program called 'something blue', maybe 'Microsoft Blue'? It is a generic program which deals with complaints; I do not recall the exact name.

To follow on from that, I notice that in your submission on page 4 you deal very specifically with those technology enhancements to provide a solution for Project Verity. Where is the QPS with that at the moment? Is it halfway through? I am referring to halfway down the page, where it says, 'It requires the QPS to implement considerable change in relation to how the QPS manages complaints devolving responsibility including significant information technology enhancements in order to provide an IT solution for Project Verity.'

**Assistant Commissioner Martin:** We are well down the path with respect to that—well down the path. The other thing that is probably worthy of mention with respect to Verity specifically is that Verity has been rolled out as a pilot trial site, as you probably would be aware, at both the North Coast region and the Metro North region. Those two regions were deliberately chosen by virtue of the fact that the vast majority of the support day-to-day for the Verity process comes from the Ethical Standards Command and key people that I am responsible for, so we needed to make sure we were able to access those earlier trial sites reasonably and they were in close proximity to the police headquarters. The other issue is that, if you can implement a system and that system can work in regions like the North Coast region, as busy as it is, and the Metro North region, then we are greatly confident that it can work anywhere in the state. So they were two great trial sites to implement Verity.

**Mr DEMPSEY:** There is another point there in relation to the CMC's research role. The QPS makes reference to 'disagreements in conclusions and delays in finalisation of reports in relation to the hood trial, the taser trial and Project Verity'. Do you have any comment in relation to that?

**Commissioner Atkinson:** Only in the context at this point in terms of where we were at the outset. I think inevitably between two such organisations there will be times when there is not agreement, but generally speaking and hopefully these things can be resolved. That can be in one of a number of ways: there might never be agreement, there might be agreement that people can comfortably live with or there might be one organisation that accepts that the other is right and moves on. They can have varied outcomes. At the risk of being repetitive, I do think that is probably no bad thing—that there can be vigorous discussion between both organisations.

So my perspective on that at the moment is that we tried to be forthright and frank in the submission because we did not want to leave anything out that should be in there. That is simply a reality. But I am hopeful that we can continue, as we have for many years, to discuss and debate these matters and resolve them. As I mentioned at the conclusion of the submission, I would hope there is no difficulty with this and I would reserve the right, if we could, to come back to you if we felt that was necessary or appropriate at some future time.

**CHAIR:** I did indicate in my opening statement that we may yet determine to have further public hearings in any event.

**Mr FINN:** I agree, Commissioner, that robust debate between the two organisations is very important to good outcomes for all of us. I note the reference and remember the taser trial. I recall that there were significant points of rub, if you like, between the two organisations regarding the policy of taser usage. It was a topic of significant discussion amongst this committee. Do you think there is agreement and understanding now about the policy in terms of taser use? Do you think the two organisations have reached the same position?

**Commissioner Atkinson:** I think on most areas there is clearly and always has been an agreement that it will be very important for us to retain public confidence and demonstrate that we use the taser appropriately and in the appropriate circumstances, that use is not excessive and that the taser is not used too quickly where other options are available and should be used. I think there is clear agreement on that. It is still a work in progress, though. We are only at a stage now where we have a draft report—and can I emphasise 'draft'—in terms of the evaluation. That draft report is currently the subject of discussion between the two agencies, so there is still work in progress there.

**CHAIR:** To lead further into the future, I suppose—

**Commissioner Atkinson:** Sorry, can I just say something on that. There was a report in the *Australian* on Monday that in effect said that the draft report—it referred to it as a 'secret report'; it is not a secret report, it is a draft report—was a whitewash and I think the next term was that the whitewash was an attempt by the police department to deny any form of accountability. That is completely wrong. Those words do not appear anywhere in the CMC's initial response to the draft report, so that aspect of that media report in my view is incorrect.

**CHAIR:** I think most members of the committee are aware of the real situation but that may give a false idea to some members of the public. If I could just jump ahead, we spoke to the CMC earlier about the soon to be vexed question of telephone interception powers. How is the QPS addressing that at the present time? We do have another submission that telephone interception powers should be reserved to only one organisation, and that submission was in relation to the CMC. In order to make sure that both organisations have the capacity to carry out their duties effectively by using TI powers, what is currently being considered in terms of the usage within the QPS?

**Commissioner Atkinson:** Obviously, we are going to be guided by the government's legislation. My understanding of that is that, as with listening devices, there will be what is referred to as front-end accountability, whereas in almost every other jurisdiction it is what is called rear-end accountability—where the warrant is obtained, the telephone interception is conducted and then the auditing or checking is done at a later stage. In Queensland with listening devices there is front-end accountability and the Public Interest Monitor is involved.

**CHAIR:** PIM was to be involved.

**Commissioner Atkinson:** Yes. So that will be a safeguard for the community and that is a determination, as I understand it, that will be embraced in the legislation. Mr Martin might know—I do not think it is finalised yet—but obviously it is for serious crime. I think it will be enormously beneficial and effective. I think that the safeguards will be there in terms of the ability for the community to ultimately know under what sorts of matters the police are successful in obtaining authority to use telephone interception and then ultimately the outcome. What is quite remarkable is just how effective it has been in other jurisdictions. You would think that perhaps people involved in serious crime might be more cautious, but nonetheless in terms of serious crimes of violence and serious matters involving drug trafficking it is remarkable how effective it is. You were not expecting me to comment in respect of the CMC submissions?

**CHAIR:** No, and perhaps I did not explain my question quite enough. In terms of the usage of those TI powers, there has been a variety of suggestions such as there should be only one organisation that does all of the TI or there should be two separate systems within your own organisation and where that would leave one or the other service.

**Commissioner Atkinson:** Could I respond to that?

**CHAIR:** Yes. I am sorry that I did not go far enough with my original question.

**Commissioner Atkinson:** I don't know what Mr Needham's view is, but my view is that they should be two entirely separate operational entities in terms of how it is done because our role will be for serious crime, and the CMC's role could be for serious crime but it could also well be for corruption investigations. I think it would be quite impractical for the CMC to have the police there if they are investigating corruption in relation to the police department. I do not think that is viable. What should happen, though—and, as I understand it, Mr Needham and I both agree on this—is that we should minimise the cost to the community and government by trying to embrace the same technology, perhaps the same standing offer arrangement so that we absolutely minimise the cost, and have a dual system in place in terms of maintenance, both ongoing scheduled and unscheduled maintenance. Again, there are economies of scale, but separate operationally.

**Mr DEMPSEY:** Pardon me for my ignorance, but does each police service, like the other states, have its own telecommunications equipment?

**Commissioner Atkinson:** Queensland is the only jurisdiction in Australia that has not had telephone interception. We welcome it. We think it will be extraordinarily beneficial and helpful in solving serious crime. Clearly the larger jurisdictions like New South Wales and Victoria have a significant capability, but I do not know the extent to which the smaller jurisdictions such as Tasmania might have.

**Mr DEMPSEY:** As far as hardware is concerned, they have their own individual hardware? They do not have to go to the Crime Commission or anyone else like that?

**Commissioner Atkinson:** I do not know. I would not imagine so. I would imagine that, where in other jurisdictions there are bodies such as the CMC, those bodies would have their own separate capability. That is my understanding.

**Mr DEMPSEY:** I am only looking at saving money.

**Commissioner Atkinson:** We are too. Both Mr Needham and I are very mindful that there are opportunities there for savings and economies of scale by using the same technology, the same equipment and maybe even the same core. I do not have a great knowledge of the detail of the technicality but wherever possible that there would be savings in purchase of equipment and purchasing arrangements.

**CHAIR:** I am sorry we have run slightly over time but we did start a little late. I do hope we have not inconvenienced you. Thank you very much for your input. Certainly, as indicated, if there is anything that you did want to bring back to us we are open to having subsidiary or additional submissions made. I indicated that in my opening. Our wish is to try to finetune everything to get the very best operations from all the constituent parts. I thank you very much for your input and certainly if there is anything that you or Assistant Commissioner Martin or any of your officers wanted to bring further, by all means do so.

**Commissioner Atkinson:** Can I ask leave to make one final comment? I fear it is possibly not fully reflected in our submission.

**CHAIR:** By all means.

**Commissioner Atkinson:** There are two areas. One is—the other may not be—an oversight on our part. With respect to the work of the CMC in terms of both investigative hearings and its work in the seizure and forfeiture of assets from criminal activity, we are very grateful and supportive of that work.

**CHAIR:** I did get that very clearly from your submission. Mr Needham acknowledged that more and more that was becoming a very good tool to assist both the CMC and the QPS to bring a lot of issues to fruition.

**Commissioner Atkinson:** Indeed. With the investigative hearings in particular we are mindful of the workload on the CMC in that regard and we are very accepting of the fact that because of the sheer enormous volume of that workload it is necessary for the CMC to prioritise what are all important matters and we accept that. If there were any application by the CMC for increased resources in either area we would be supportive.

**CHAIR:** Thank you very much, Commissioner. Thank you, Assistant Commissioner Martin. We will adjourn for a short period.

**Proceedings suspended from 3.06 pm to 3.18 pm**

**CROSS, Detective Superintendent Anthony, Vice-President, Queensland Police Commissioned Officers' Union**

**POINTON, Superintendent Dale, Executive Member, Queensland Police Commissioned Officers' Union**

**SAVAGE, Superintendent Peter, President, Queensland Police Commissioned Officers' Union**

**CHAIR:** We have representatives from the Queensland Police Commissioned Officers' Union here. Superintendent Peter Savage is the only one we have down, so perhaps for expediency the other representatives could identify themselves.

**Supt Cross:** My name is Tony Cross. I am a superintendent of police at the Metro South region. I am Vice-President of the Queensland Police Commissioned Officers' Union.

**Supt Pointon:** My name is Dale Pointon. I am a superintendent and I am an executive member of the Queensland Police Commissioned Officers' Union.

**CHAIR:** The documentation and submissions have not been tabled by the committee prior to the hearing. We have resolved that at the end of the evidence taken we would table the actual submission. We understand that, owing to a private submission, the attachment to your submission may well contain matters of a personal nature by a private submitter. Do you have any objection to the release of the whole of your submission?

**Supt Savage:** No, we do not. We have communicated with the particular person that you referred to. As you have alluded to, that person has made her own submission to the committee. She has made it quite clear to us that she has no objection to that being released.

**CHAIR:** In terms of private submissions, we have discretion as to what is actually tabled when it comes to matters of a personal nature. That is the reason for my raising that. If you have checked with her and it is in order to do that then at the conclusion of your evidence we will table your submission.

**Supt Savage:** Thank you.

**Mr FINN:** Can we re-address that issue at the end of the evidence?

**CHAIR:** Yes. We have asked submitters to make a short opening speech. We have indicated that it can be 10 minutes. Then we will deal with matters of an evidentiary nature. Did you want to make any opening remarks?

**Supt Savage:** I would like to open by saying that we represent some 360 commissioned officers within the Queensland Police Service. We are a relatively small union, as you would appreciate. There are near on 10,000 members in the QPS at the moment. Principally, our function is to deal with particular welfare issues that come to light from time to time which impact on our membership generally. As members of our union we have some 260 inspectors, about 50 superintendents and some 14 to 15 chief superintendents.

As a general rule, very few of our members become embroiled in disciplinary matters and become the subject of disciplinary investigations. As you would note in our submission, our major concern revolves around the timeliness of investigations carried out in respect of the small number of our members who become the subject of investigations.

I do think we can enlarge greatly on the content of our submission. The terms of reference for the formulation of this inquiry, which you circulated, touched on a range of other points. The three that we have actually focused our attention on are the ones that we saw fit to address in principle.

**CHAIR:** Certainly some of the matters that we have to consider may not be of any concern to your union. Certainly the thrust of your submission was fairly clear.

**Supt Savage:** Can I emphasise the reason for the three of us coming here today. Whilst I am the president of the union, I am really performing a figurehead role today. I have asked Dale to come along. Dale has a legal background and plays a very important role in our executive in assisting any of our members who become embroiled in investigations of a disciplinary nature. Prior to recently taking up his appointment at Metro South, Tony played a very prominent role at the CMC in the investigative arena. He has a fundamental understanding of the workings and the relationship between the CMC and the QPS. I will certainly ask them to have a fair bit of input into responses to your questions, if you do not mind.

**CHAIR:** That is fine by us. In your submission you mentioned the 'bureaucratic and tardy' nature of CMC-run investigations. Can you expand on the basis for your allegation of tardiness? I realise some things go on for a long time. It is not just CMC investigations, as I understand it. There are others that may go on for a significant period of time, even in normal police work. Is it the feeling or is there a suggestion that there is intentional tardiness? Is it because of the act itself and the requirements of the CMC?

**Supt Pointon:** I have not drafted that submission but I will talk to it anyway. I suspect what it relates to is the length of investigations. At the end of the day, when we look at how protracted some investigations have been and the seriousness of the charge, particularly with our members—quite often they come back to the service—we wonder why it has taken so long. Why could it not have been truncated to a six-month period? It seems like the investigations go on and on.

We have to rely on what our members are telling us as we are not involved in some of those hearings. We find that they have been interviewed a number of times over the same issues. We could understand it if there is new evidence that comes out through interviewing other witnesses and they want to put it to them, but that may not necessarily be the case.

We speculate as to how that comes about. We fear that there may be more serious matters that could be underlying all this. From the experience of our commissioned officers, that is probably not the case. I am sure somebody might rebut that statement. I am generalising.

It is making sure that everything has been done comprehensively. I think sometimes it gets to the point where you have to make a decision and say, 'How far do we go into this? Do you dot every 'i' and cross every 't' or is this something that does not warrant that level of investigation?' We have seen cases where we think the investigation has been far too comprehensive. There might be two misconduct matters to hear but 16 volumes of material turn up. To find the evidence to support those charges is an issue in itself.

**Mr FINN:** The suggestion you appear to make in your submission is that investigations against police officers seem to take longer than investigations against other public officers or other CMC investigations. Do you think there are any structural impediments when it comes to investigating police officers that might result in that length of time for an investigation?

**Supt Pointon:** I do not think so. Is there something specific you have in mind?

**Mr FINN:** No, I am trying to flesh out your suggestion. The impression I get from your submission is that it appears to you that it takes longer to investigate allegations against police than it takes to investigate people in public office.

**Supt Pointon:** It is an observation that we have made. We understand that there are other reasons that may be the case. If it is a high-profile person they may want to truncate the investigation and get it over and done with very quickly. There may be political implications that might not apply to a police officer. It seems to be the case that when it is necessary to get an investigation done very quickly it gets done very quickly.

**CHAIR:** That is of a police officer or a particular figure or particular figures?

**Supt Pointon:** The more public figures. They are very short investigations or they are done more quickly. I have no doubt in my mind that it is not just commissioned officers that they have to investigate. There are many matters that they have to investigate. We would like priority for our members, of course.

**CHAIR:** I guess everyone would.

**Mr FINN:** We do not want any of ours investigated.

**CHAIR:** I would like to take that a bit further and work backwards probably. You suggest about every six months or so—this is on page 2—through a subcommittee a review of complaints which have been under investigation longer than six months as to reasons why. The review of the investigation should address how the investigation is progressing and the subject officer's welfare and medical conditions associated with the investigation. First, how many investigations are you dealing with in terms of your own officers and how do you perceive that working?

**Supt Pointon:** I think it is the old story of what you measure gets looked at. I think that sometimes—and I am only speculating; I am not down at the CMC—with the volume of work it is easier for these things to just slip away and for the time frames to just slip away, but of course if you are reporting on these people on a regular basis then it stays in focus.

Certainly with regard to some of our members, I think the danger is that if it is tied up in investigations with other people as well, while those people may only have some simple matters, it can then stretch out for a number of years while everyone else is dealt with. The problem is what happens in the meantime. You can imagine the impact on a member's family. They may be not allowed to work in a particular location or some locations. They may be moved around a bit. They will not get any of their medals, because the commissioner will not award any medals to them in the interim while they are under investigation. The essential selection criteria for any promotion involves integrity et cetera. So straightaway they will not be considered for any promotion in the meantime. It can also flow on to any potential lateral transfers. So their whole career is put on hold until that investigation is finalised.

It may well be that if it is substantiated their career may stay in abeyance for a number of years, but it may be the case that within two years of getting their medals or whatever else—they will not be getting their medals but they may be promoted again—it just holds the whole process up. So in essence just the length of the investigation has been a penance. Of course, we make those submissions all the time when we make any sort of submission against penalty. I do not know if they hold any weight, but we put them anyway.

**Mr DEMPSEY:** Is there any way that you as a union can think of to alleviate that process?

**Supt Pointon:** We could make the same complaints against the service as well, and we have. We are not picking on the CMC in particular here, but we have put some structures in place with the service and some better practices—we think they are better practices—in reporting to members, even just to tell them where the investigation is at, how long they think it will take, what stage it is at and those sorts of things. Many members have no idea what is going on, quite often. They are sitting there waiting and have no idea whether they are going to be charged, no idea whether the investigation has just stopped or whether it is still going or—

**Mr DEMPSEY:** You mentioned the welfare and the medical side of it as well. Would you have any inkling of how to measure that or to have those checks and balances in place?

**Supt Pointon:** Even we could report on that. We do not have a lot of members, but almost without fail those members who are under investigation, particularly with the lengthier investigations, end up with medical conditions such as suffering from depression and taking medication for that and are off work. So we have to manage them on sick leave as well. The other thing we notice is how they come out of the process. Even at the end if they get a good result, it has changed them forever. They have a different attitude towards the service and towards the work. The ones who do not are the ones that you get in and deal with quickly and get them back out there. Even if the penalty is just as severe, if it is dealt with quickly it is fine. It is that length of time that seems to have the impact on them.

**Mr DEMPSEY:** Has the QPS provided you with any studies or anything else they have done as far as after the investigations? Are there statistics or anything else like that?

**Supt Pointon:** To my knowledge there has never been any sort of research into that at all.

**Mr DEMPSEY:** Do you have any form of feedback to use as the commissioned officers' union?

**Supt Pointon:** When we are dealing with the commissioner, we could certainly be referring to individual cases and where they are.

**Mr WELLS:** Sorry, but could you say that again? Referring to individual cases?

**Supt Pointon:** We could talk to the commissioner about particular members. We would probably have six members under investigation at the moment, roughly. There have been times when we have had none but not for a couple of years now, unfortunately. So these people we tend to all know personally because we are a small union and there are not that many cases.

**Mr WELLS:** Six that you know of?

**Supt Pointon:** At this point in time we have provided legal assistance to six members. Is that right; five or six?

**Supt Cross:** It is about that, yes.

**Supt Savage:** There has to be a degree of confidentiality there as well, as you would appreciate. We often get the okay from members to actually discuss it in an open deputation with the commissioner and other senior executive members. So there is that flow of information and response that we get from time to time as to how investigations are going. But often they are not in a position to specifically update us with where the investigation is at, either.

**Mr DEMPSEY:** I want to ask about the end of an investigation, when everything is cleared and a letter comes through saying, 'Yes, everything was fine and there's nothing to worry about.' Do you think there needs to be a process—I am probably pre-empting a process—to have those officers provide feedback, more or less as security so they do not worry about how this is going to affect their careers, their family, their children and everything else like that? Do you think those things need to be put in place?

**Supt Savage:** I think that would be a very positive step, but from what we have seen in the last number of years some of our people have been penalised before the final outcome of the investigation is determined, in our opinion.

**Mr DEMPSEY:** Yes, 'paranoia' was probably the word I was looking for. Afterwards, it is as though something has been put against them and that creates a perception of mistrust in some way.

**Supt Savage:** Absolutely.

**Mr DEMPSEY:** Can you think of anything that would be able to assist in that process followed on from the QPS?

**Supt Pointon:** Now as a consequence of discussions with Assistant Commissioner Peter Martin, he actually does ring members under investigation—commissioned officers—and speaks to them on a fairly regular basis and just explains to them at what stage the discipline process is at, and that has helped. In the past I think we did it a fair bit, but members who are under investigation do not see us as senior police. They see us as the union executive and they look at the service as someone who does not care. I think we have made some inroads there. They are not formal processes but they are processes we have agreed to, and that certainly has helped as far as their welfare goes.

**Mr WELLS:** The points you make about the traumatising effect of being investigated on members of your union are points that could be generalised to all people who are the subject of investigations, I expect.

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**Supt Pointon:** Definitely. There is no doubt that a person under investigation for a criminal matter and their family would undergo the same sort of pressure. I am sure you already know that. Families are always penalised. But this may be a misconduct charge and the penalty may not be that serious. It might not have been a very serious misconduct matter in the grand scheme of things, but it has been when you look at the effects that it has had on the member and the member's family, particularly where it is protracted.

**CHAIR:** So the ultimate punishment far outweighs what is perceived as the seriousness of the original—

**Supt Pointon:** Yes, the length of the investigation has been a far greater penalty for them than the charge—

**CHAIR:** The penalty itself.

**Supt Pointon:** Yes, than the charge and/or the penalty itself.

**Mr WELLS:** Are you aware of whether the traumatising effects of being investigated are more severe or less severe depending on whether the person is ultimately found guilty or not? For example, if the person is completely innocent and has simply been set up—and it has been known to happen to people of your profession and ours—are the effects less or are they more, in your experience?

**Supt Pointon:** In my experience with commissioned officers, we have not had any members in a situation where they have been set up. I have not looked at any other research to generalise about it.

**Mr WELLS:** I am not saying set up by the CMC; I am saying set up by the circumstances. So undoubtedly there would have been cases where one of your officers would have been investigated as a result of an allegation that might have been malicious and unfounded but nevertheless they had to go through the process. I am wondering about the extent of the psychological trauma of that officer in those circumstances.

**Supt Cross:** Can I just say that you would have to experience it yourself to really know what they are going through. If you are a police officer being investigated, no matter what the matter, you are very worried about the situation. I do not think it matters either way. I think it applies across-the-board. If you are being investigated, the effects are the same, even if they turn out to be frivolous or vexatious complaints.

**Supt Pointon:** We certainly have had complaints where there has not been a skerrick of evidence to substantiate particular complaints, and I can think of a particular occasion where there was a whole range of complaints. Some of those complaints may have been substantiated but for some of them there was not an ounce of evidence, but the effect of it really comes back on to the individual officer. Some officers can weather anything and other officers cannot weather too much at all. With regard to very serious complaints, one officer might weather it and be back at work as soon as the matter is finalised and another one may have something that is not very serious and not weather it at all.

**Mr DEMPSEY:** But with commissioned officers, their integrity and their moral standing seem to get questioned. As a general view, it would seem to have more of an impact on them than on someone in a different field where integrity might not be part of their job description or an allegation does not affect their chance of advancement or their whole life of service.

**Supt Pointon:** The experience is limited. If you look at the sample that we would be drawing from—that is, commissioned officers under investigation—it is probably not a good thing to generalise. But it seems to me that it is the officers who make mistakes when trying to do the right thing who suffer the worst as opposed to officers who have deliberately done something wrong and end up being investigated.

**CHAIR:** That does call into question their ability to make a decision, does it not, and possibly that is why, if they have tried to do the right thing and it has backfired—

**Supt Pointon:** Sometimes the actual charge relates to poor judgement. That is part of the evidence that goes against them. You can imagine that that does have a fairly strong impact on a commissioned officer—being told, 'You've made a decision and you've exercised poor judgement.'

**Mr DEMPSEY:** But is that a confusion between misconduct and disciplinary action again?

**Supt Pointon:** Well, we would be submitting it is a managerial issue, not a matter for discipline at all. But that is where the line is drawn.

**Mr DEMPSEY:** It just seems that it has come across a number of times in relation to different matters before us.

**Supt Pointon:** I think we are fairly strict on police—commissioned officers on the whole—particularly on those sorts of matters. But I come from the executive of the union and obviously I have a bias, like everyone else does, I suppose.

**Mr WELLS:** Given that one of your concerns is the duration of investigations, I am wondering if, comparing like with like, there is a difference that you are able to discern. Have you a concrete example of a case of excessive force or something like that by a commissioned officer, which effectively is an allegation of assault, and how long it would take an ordinary case of assault such as the police might pick up in my electorate on a Saturday evening to be investigated?

**Supt Savage:** That would probably get about a week's turnaround.



**Supt Pointon:** It would depend on the circumstances—whether you can find the perpetrator of the offence and I guess all of those other matters, whether the victims are coming forward. There are just too many variables in those sorts of things. Obviously, if you have a complaint and know who the perpetrator of the offence is, then obviously you get a quick arrest. With a police officer, I imagine, even in those sorts of matters they would still be fairly protracted. Of course, then you have the complexities of whether the police officer, if they have used excessive force, should be charged criminally as well as a disciplinary matter taken against them.

So there are other extra factors that would go into the decision-making process with a police officer. It is something that I have never had to deal with with a senior police officer because, obviously, most of them are not out there on the street every day of the week arresting people. I guess there are all of those other matters that you have to take into consideration.

**Mr WELLS:** My question is a naive one. I am just trying to compare like with like. It is very hard to get an appropriate case. There is a suggestion that it is taking a long time for the CMC to investigate commissioned officers. There is a perception—and it is one to which we would prima facie give assent—but I am trying to do a reality check by trying to compare how long it takes an investigation of a police officer compared with how long it would take an investigation of somebody else in some similar circumstances. Can you give me a concrete example?

**Supt Cross:** Can I just comment there? We raised the issue in the recent public sector review of the QPS about the length of time to conduct investigations generally. We were critical and we certainly know the QPS needed to speed up the process. We are saying the same across-the-board with our officers. The investigation is conducted and, as you know, we do hundreds or thousands a week. They are charged, they appear in court, they get a mention date, they get a committal date and a remand date. They have a time frame in which they know they are going to be dealt with. I know it would not be possible to do that across-the-board, but it would alleviate a hell of a lot of tension if we could give police time frames.

So we are not criticising the CMC by itself. We have said the same about the QPS. That is our message that we would like to get across today. We have been talking about this for years—trying to do something about the length of time and reduced times in our operational procedures manual on doing internal investigations, but we have not really been able to achieve it. As I said, it has been going on for years and it stays the same.

**CHAIR:** For the moment, just putting aside the fact of investigations taking a longer period of time for police officers, is it fair to say that the general thrust of your submission is that it is more that some method be looked at, be considered, be implemented whereby the officer concerned, even if they do not have a time frame, as you indicated, within a defined period—and you have suggested six months—that there be a reporting requirement on where things are at or what further delay may be encountered?

You may never, ever be able to overcome any delays in investigation for a whole heap of reasons. In a previous life I worked in the courts system, so I have a little bit more knowledge about how a time frame helps. But even if there were to be some long investigation, if the pressure was taken off and you use exactly the words as to how the investigation is progressing, if there is some method instituted whereby the officer concerned, without any compromise of any investigation—and it has to be dealt with on this basis, I believe—is able to be informed of where it is at, what is the further anticipated time frame or the basis for any further delay. You mentioned the officer's welfare and medical condition. It may well be that that does not need substantial addressing if the person concerned is aware of where it is going. Is that the general thrust of what you are submitting?

**Supt Cross:** I believe it is, yes. I do not know what our president thinks, but that is certainly where I think it is at.

**Supt Pointon:** As to the reporting structure, I guess there are two things: a reporting structure so that you know that it is on the radar all the time, that the matter is still being considered and it has not dropped off the radar and then feedback to the member as to how the matter is progressing. Obviously there are limits to what you can tell them, but certainly you can talk about the process, if nothing else, about where we are—'We are still interviewing other witnesses. We may have to interview you again. We will let you know', whatever—just some feedback.

**Supt Savage:** I think the nature of the allegations—it is a lot to do with the unknown here as well and trying to give people clarification as to exactly what the level of investigation is all about.

**CHAIR:** Yes. I can perceive some difficulties with that in that if it involves other people, the outlining of what the substance of it is could very well impact on investigations of others where it involves third parties, as sometimes it does. For the officer concerned to be able to know, as Superintendent Pointon said, that it has not fallen off the radar—'We are still continuing, we cannot give you an answer yet, we have to speak to more people, we anticipate there may be another period of time'; is that the general thrust of your submission?

**Supt Savage:** I think so, yes.

**CHAIR:** Because the perception is whatever this committee does, or even probably whatever the QPS does or the CMC does, it may not be in any way possible to say, 'You have to have this wrapped up within three months,' or 'You have to have this wrapped up within six months.' It is the unknown, or it is the removal of the unknown that is the general thrust of your submission for the welfare of your officers.

**Supt Pointon:** I agree. There will be times when an investigation may have to run four years, five years, six years. There may be 20 people involved in the investigation. Our commissioned officer might be right at the front, investigated and finalised, but the whole matter will not be finalised until six years down the track.

**CHAIR:** Yes.

**Supt Pointon:** They sit there in a black space all of that time.

**CHAIR:** Yes, but if they are not in the black space, if they are getting some feedback to say, 'Look, it is still continuing,' that would alleviate the majority of your concerns?

**Supt Pointon:** I think so, yes.

**CHAIR:** Maybe not the majority but a lot of your concerns.

**Supt Pointon:** I am sure we can even go to the next step and say, 'There are a lot of other people we have to talk to in this matter and it is going to take a number of years before we finalise it.' I think if they even knew that, that would help them out. Obviously we have lots of complaints from officers about allegations and about not knowing what the allegations are. There certainly will be occasions where you cannot divulge what the allegations are because it may in some way hinder the investigation or cause some issues.

**CHAIR:** There are just two other things in the thrust of your submission. One was the role of the CMC police group, which I will mention shortly. The other was the proceeds of crime. I think it is fair to say that the CMC has spoken about greater profiling and some more funding for the proceeds of crime group. You support that, as I think the commissioner indicated, so we may not need to go too far along with that line.

In relation to the CMC police group, you mentioned police officers seconded to perform duty and moving positions for commissioned officers from police to the CMC. This has been raised. Are those positions moved? We understood from discussions with the CMC that there is not necessarily a removal of that position.

**Supt Savage:** Our understanding is that there are a designated number of full-time employee police positions allocated to the CMC and they are budgeted by the QPS. Our concern is that one of those positions remained vacant for a considerable length of time and that that particular role was filled by a civilian investigator. We have communicated with Mr Needham about that and he has indicated to us that he has spoken to the commissioner and that commissioned officer position, if not required, will be reallocated to the QPS. But to this point, we have not clarified exactly where that position number, if you like, has been dedicated to. So it is probably an issue that is still in progress, if you like.

**Supt Pointon:** I guess the flow-on to that, too, is if you keep in mind that we are still a very hierarchical organisation and career progression and opportunities for people are limited, so we try to protect those commissioned officer spots and not lose positions. So if you put an AO7 there, that is one less position that we have for promotion for a commissioned officer and one less opportunity. We really try to protect every spot we can because there are so few. So that is just another factor, I think, with those sorts of things.

**CHAIR:** I think that covers it, but there is one thing that I think Mr Finn wanted to raise—and we did mention it at the start—about the attachment to your submission.

**Mr FINN:** Yes, I want to mention something about that, but is everyone else finished?

**CHAIR:** Yes.

**Mr FINN:** Before I do, just picking up on those two things, I think your submission says that we should be better reviewing, better interrogating the CMC about long-term investigations. In our bimonthly reports, we receive reports on every investigation that is ongoing, but there is often a stack of information and perhaps they are not laid out in a way that we can readily come to those ongoing things. I am certainly very happy to take up how we can better identify those and how we can better talk about those things. Staffing also comes up in the CMC reports on a bimonthly basis to this committee. That report includes staffing and you can be assured that one of the things that this committee regularly asks is, 'Why are there vacancies and what are the difficulties in filling positions and where are those designations?' So I think you have hit on a couple of things that we do look at, but we need to perhaps look at how we get better interrogation of those things.

What I wanted to come back to is at the start we mentioned that there was a decision of this committee, following a request from media this morning, that we were not going to publish the submissions we had received until all of the public hearings were over. We then had requests from the media to publish submissions so that they could write stories on them today. As a committee, we decided that we would publish submissions at the completion of each witness's evidence, ...

I am just wondering, with respect to your position, whether it would be appropriate for us to publish the two pages of your submission that relate to the detail and not publish that attachment that relates to the individual ...

**Supt Savage:** I am very comfortable with that, Mr Finn. I have no objection to that at all.

**CHAIR:** Ultimately that will be a final decision of the committee, but you are at ease with that?

**Supt Savage:** Absolutely.

**CHAIR:** Thank you very much Superintendent Cross, Inspector Savage and Superintendent Pointon. We will give due consideration to your submissions. I thank you very much for your considered submission. We can let you go back to your duties now.

**Supt Savage:** Thank you, Mr Chairman and committee members. We appreciate your time.

**Mr WELLS:** Mr Chairman, my daughter's year 12 formal calls me. I will have to excuse myself.

**CHAIR:** Mr Wells, you are excused.

**HARDY, Mr Stephen, Director, Ethical Standards Unit, Queensland Health**

**LI, Ms Yvonne, Assistant Director, HR Policy and Recruitment, Queensland Health**

**CHAIR:** Thank you very much. I am sorry that we are running slightly over time. There are a variety of reasons for that, but I will not bore you with them. The committee has resolved that submissions will be published after any evidence has been taken. If you have any objection to that, please indicate.

**Mr Hardy:** No, Mr Chairman. That is fine.

**CHAIR:** We have been allowing witnesses to make an opening statement of roughly 10 minutes. If you do not need 10 minutes, by all means feel free to take as short a time as you like. Then we will deal with any specifics that you raise. Would you like to start?

**Mr Hardy:** Certainly. The letter to yourself, Mr Hoolihan, by Michael Kalimnios dated 3 November was principally authored by myself and Ms Li, so we are here to speak to it. My position is Director of the Ethical Standards Unit of Queensland Health, which is the principal unit in Queensland Health to manage complaints of suspected official misconduct referred by the Crime and Misconduct Commission for the department to deal with. From the outset I should state I was formerly a senior officer of the CMC, having worked there from 1996 to 2006. I should state that at the outset.

**Ms Li:** Disclosure.

**Mr Hardy:** Open disclosure! I started work at the Ethical Standards Unit in August 2006. It has presented some considerable challenges in dealing with the large and growing number of complaints of suspected OM. There were pockets of underreporting and I am sure that there still are, but we are managing to educate and train people in providing those to us so that we can fulfil the obligations of section 38 of the act to report them to the CMC. The department quite clearly wants to be open and transparent about what complaints are made and what allegations are made, from whatever source within the department. It is just a question of how we go about managing them.

It is only a small unit. The Ethical Standards Unit presently has six investigators, myself as a director and two support staff. It is only fairly small when compared to other agencies such as Education, which has about 25 staff in its Ethical Standards Unit and, of course, as you know, the Ethical Standards Command of the Police Service has many more people to deal with complaints in relation to 11,000 staff. Queensland Health has 68,000 staff. It poses considerable challenges for our unit with such small resources.

Having considered all those circumstances, the CMC has agreed to enter into a project with the Ethical Standards Unit that will take all of 2009 and I suspect 2010. It will be about risk based assessment of complaints to determine which part of Queensland Health ought to be responsible for managing the complaint. Essentially, with the assistance of the CMC in making these risk based assessments, we will determine which complaints should be investigated corporately by the Ethical Standards Unit and which matters ought to go back to the district CEO and his staff to manage. Obviously there are risks involved in that process, but the project is designed to try to address those risks—the risks of perception about managers investigating their staff and perceptions of creating greater bureaucracy et cetera. The project is designed to have feedback from all our stakeholders, internal and external, to come up with the right mix so that the CMC is aware of exactly where the complaints are being managed.

Underpinning all of that, we are negotiating with the CMC to utilise its internal complaints management system. Essentially, my staff will be feeding the complaints directly into the CMC's database remotely. The CMC will be able to electronically monitor the progress of files that the department is managing and will be able to print out greater information from that database for the information of senior managers of the department. I see no negative to using the CMC's database. The CMC has generously indicated that they will provide their COMPASS database at no cost to the department. We need to work fairly hard to restructure it to suit Queensland Health's purpose, but Helen Couper and the senior staff of the CMC, no doubt, will provide the technical assistance to do so.

I see it as a pretty exciting challenge for us to do this. I have already heard people say that this is just the ESU giving work back to the districts. But I think that to deal with the numbers of complaints—at this stage about 400 a year and increasing—we cannot deal with it as a small corporate unit. The Forster review made some determinations about the size of the corporate office staff. Of course, it is difficult to now say, 'I need 25 or 30 staff' when those sorts of decisions have already been made. The devolution project is really another way of saying that we can deal with these matters, we just have to determine which are the most serious ones, which are the ones that require a corporate office response, which are the ones that the public would expect should be done by corporate office and which ones are satisfactory to be dealt with at a local level.

I see some advantages in relation to speed. Timeliness is an issue when you are dealing with hundreds of complaints and there are only six of you trying to do them. We need to get matters back to district managers and say, 'Get on with it and finalise that complaint; deal with the complainant, deal with the matter and get it finished quickly.' I see timeliness as one of the major factors and one of the benefits of this project.

I think it is very important for the department that it is successful. It is a two-year project. We hope to have it approved by EMT on Monday week, with a start date of 1 January, with a six-month build-up period before a pilot on 1 July next year in three districts: the Townsville Hospital district, the Sunshine Coast and I am hoping that the PA will come on board as well. They are fairly good representative departments with strong CEOs who will help us make it happen.

In relation to the second part of the letter, I did indicate that there may exist further opportunities for the CMC and the departments to conduct cooperative investigations. In that regard I was referring to a small number of cases where there can be fairly highly complex issues relating to conflicts of interest and tendering processes. There is a fairly high threshold for the launching of a misconduct investigation by the CMC, and quite rightly so. But there are certain matters that it is very difficult for a department to investigate without any coercive powers whatsoever. Unless the evidence exists in a document somewhere inside the department or somebody is willing to make admissions to me in relation to the conduct, it is difficult to actually work on a corrupt association between an external party to the department and a departmental officer. It would be useful, in some instances, for the department to undertake the internal inquiries and for the CMC perhaps to consider undertaking some call charge records or reverse call charge records to see if there was any telephone contact between the businesspeople at a particular time in the negotiation of tenders. That might launch into some further inquiries after that. It is very difficult to conduct some of those matters where the evidence tends to lie outside the department. Unless there is a high level of evidence or a high level of smoke, you might say, in relation to the matter, it is unlikely that the CMC's Misconduct Investigation Unit will launch an investigation without that level of evidence. I see some level of cooperation.

I should indicate that the Misconduct Division has always been supportive of the ESU, from Mr Lambrides through Ms Couper down. There are no issues in relation to the cooperation we have had. I see that there might be some consideration given to expanding that cooperation to that level of assistance and joint investigations. The third point of the submission was actually penned by Ms Li. I might let her speak to that.

**Ms Li:** Thank you. It was more a threshold issue in terms of whether a matter or an incident meets the official misconduct threshold. In some instances where there is a penalty unit attached to an offence, for example, it is my understanding from a reading of the facts and reading the legislation that it automatically amounts to a criminal offence and, therefore, falls into the official misconduct category. We are thinking for the purposes of administration it takes a lot of time to process that sort of complaint. A penalty unit that does not have a period of imprisonment attached to it could be a criminal offence; it could amount to official misconduct. But offences that just have penalty units of themselves may not amount to official misconduct; currently they are classified as official misconduct, as I read and interpret it. My submission was whether there could be an exploration into whether we could raise the bar, if you like, of what would amount to official misconduct in terms of penalty units. Does that make sense?

**CHAIR:** Yes.

**Ms Li:** Of course in the Criminal Code all that is criminal offences.

**CHAIR:** That speaks for itself, but you are dealing with other—

**Ms Li:** HR things. For example, the Anti-Discrimination Act is one that I deal with as a HR professional. Some of the offences in there will have a penalty unit, but it is not something I would dismiss them on, but because it is a penalty unit automatically it is an official misconduct. Some other ones in the Anti-Discrimination Act also have penalty units plus a term of imprisonment. Sure, that speaks for itself; that is a criminal offence.

**Mr Hardy:** In relation to the project that I am proposing, one principle aspect of it will be some agreement with the CMC in relation to an expansion of its section 40 guidelines to enable the department to get on and deal with some relatively minor matters. For example, I might indicate that we constantly get reports of missing Panadol or Panadeine Forte in hospitals. The argument, of course, is that that is a theft, a criminal offence and has to be reported. But obviously we do not want to log jam the CMC with allegations of reported theft of Panadol at a hospital, particularly when the use of Panadol by my staff might get them working better to assist patients. We need to come up with some sensible section 40 guidelines to say, 'You can get on and deal with these types of lower level matters.' I see that there may be opportunities for our project to come up with some section 40 guidelines for relatively low level matters so that we can get on and deal with them quickly. That is one possibility.

**CHAIR:** You seem to have somewhat the same difficulty as the QPS has with the difference between misconduct and discipline.

**Mr Hardy:** Yes.

**CHAIR:** Perhaps that is something that may emerge from the project that you are looking at as to what instructions or directions are given under section 40.

**Mr Hardy:** Ms Li's point is that there is legislation that affects Queensland Health, and some are fairly minor breaches of legislation that the CMC really would not be interested in dealing with. We know that up-front. Whether that is dealt with by an alteration to the definition, that is a matter for the committee. I certainly would be trying to do something in relation to some relatively constant themes that we see coming up all the time that we know the CMC would not be interested in.

**Mr DEMPSEY:** Considering you have over 65,000 employees, is there an easier system of recording that information, not just in Queensland but maybe in any other state or country?

**Mr Hardy:** I went to a hospital recently to talk about the project. We had some very robust discussions about, 'We don't tell you everything anyway. You just don't want to know about that missing panadol so we don't tell you. We deal with that quickly. The nurse gets them in, slaps them on the wrist and says, "Don't do it again." If we had reported it to you, you would be inundated with complaints.' So I said, 'But where do you record it now?' They said, 'We don't.' Missing panadol is one thing, but the week I arrived somebody thought that 70 ampoules of missing pethidine by the senior staff was a systemic issue and they were dealing with it as such: 'It's okay to just talk about it and we'll fix it up.' But it was a theft of 70 pethidine ampoules and they were a little bit upset that I had to get the police involved.

If you do not have some guidelines about what is reported and where, then that is what happens—the creep occurs. So we need to sit down with the districts that I am working the project with and the environmental health unit, which deals with the systemic drug issues, and say, 'The one ampoule of pethidine has to go into this pile where it can be dealt with locally, but it has to be somewhere in a database in the district so that if we need to get it we know where to get it. But other drugs need to come to the ESU.'

In previous times we would maybe have a section 40 obligation and tell the CMC at the end of the month. By using COMPASS directly, the CMC will get to know about it immediately because I will be putting it straight into their system. We will be saying that either we think it is not official misconduct or it is. It will all be on COMPASS, apart from the things that the CMC will agree can be in some database in the district that we can tap into if we want to. Training people to make them put it in that database in the first place and making sure that they do it is the hard part.

I hope that my unit will eventually become more of a monitoring unit that says, 'We're going to come to your district every year and we're going to monitor your files to see how you have gone and, while we are there, we will look at this database to see that you've put everything in there,' and then feed that information to the CMC in some way.

**Mr DEMPSEY:** With Queensland Health being such a large organisation, is there an education process in relation to ethical standards being conducted throughout Queensland Health in a positive way, creating confidence in the workplace as well as people being able to report things more freely without thinking that it is going to have an enormous effect on their career?

**Mr Hardy:** Whistleblowing management is a particular challenge for us. Obviously the events that led up to the inquiry into Queensland Health and Bundaberg Hospital indicated that there were challenges to manage them and there still are. But I think the evidence from that and since then clearly indicates that people are more willing to make complaints and know that they will be protected for doing so. Whether they are totally satisfied with those management practices I think needs improvement. I think the increase in complaint levels that we are getting indicates that we are having some impact, particularly with official misconduct.

My team leaders and I go to each district at least yearly and provide ethical awareness training, as we call it. Essentially it is about definitions of official misconduct, where to make a complaint and how it will be dealt with. Clearly we need to revamp that with our new project. But ultimately after we have been there we get a flood of complaints from that district because people now know that they can do that.

We have been training the HR managers in the district to be able to identify and feed things to us. The link with our unit is that if it does not come from the complainant it has to come from some management position, and it is the HR managers who tend to get those complaints and feed them to us. We have gone from maybe 200 complaints to close to 350 or thereabouts, so we are showing improvement. I think that shows a level of capacity that the people will make complaints now. I think transparency-wise they have to see that we are going to get out there. The main problem we have at the moment is that, because we have so many complaints and so few investigators in the department, timeliness is an issue in getting to it and getting it resolved. The project is about trying to get more people to deal with it and get it done at the right level.

**CHAIR:** In terms of you going to hospitals and doing that training, you have a fairly good backstop with the CMC and their training programs. Do you use them?

**Mr Hardy:** Ms Couper particularly has been to many of those sessions. We do joint training. In fact, Ms Couper and I were in Townsville on the 5th to provide training and to tell them about our project and say, 'Get on board.' It was very positive feedback. So we go often to the CMC. We make sure that we put our training past the CMC before we give it.

**CHAIR:** I think your submission was fairly well set out. Certainly we will take that on board. I have one question about you using COMPASS. In your protocols or your agreements with the CMC, what level of complaint or concern do you put into the COMPASS system? Is it right down to the single panadol?

**Mr Hardy:** When a complaint is made you have to delineate each of the allegations and set them all out. So, yes, every complaint that could amount to official misconduct, and even the ones that do not, you have to separate out and put into the system. That is what I have really missed, because my database at Queensland Health only records one subject officer per complaint—it has not got the capacity to deal with more than that—and one allegation per file. One file I am dealing with involves 53 allegations.

**CHAIR:** How do you deal with that?

**Mr Hardy:** I make it up.

**CHAIR:** Make 53 entries.

**Mr Hardy:** You write it in long hand. You put it all in and say, 'We're dealing with 53 at the end of the day.' The database means nothing as it currently stands. That is why I am begging for something else. A decent database on the open market is about \$750,000 to \$1 million. I understand that the CMC has invested \$2 million into its system.

**CHAIR:** That is probably one of the cheap ones.

**Mr Hardy:** It is. I know they have invested a couple of million dollars into COMPASS. It is a really good deal for us if the CMC are happy to give it to us. It is a win-win situation. The benefit for them—and for me, too—is that we do not have to have requests for how we are going with that case. They can look at their own system and see how we are going. That is what the Police Integrity Commission has in place with the police in New South Wales. Helen and I were there a year or two ago. We thought it was a good idea.

**CHAIR:** They use COPS and C@TSI.

**Mr Hardy:** I thought that was great. I said, 'I want one of those.'

**CHAIR:** There being no further questions, thank you very much for your input. Once again, I am sorry to have held you up.

**Mr Hardy:** It was a pleasure to be here.

**Committee adjourned at 4.24 pm**