



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

THURSDAY, 20 NOVEMBER 2008

Brisbane

THURSDAY, 20 NOVEMBER 2008

Committee met at 9.14 am

CHAIR: Good morning and welcome. At the outset, I will indicate that Mr Simon Finn, a member of the committee, has a commitment in his electorate owing to last night's storm and he has indicated that he may be slightly late this morning. We do have a quorum so we can commence the proceedings.

I am pleased to reconvene the 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 (1) conduct a three-yearly review of the activities of the CMC and (2) 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 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. The committee also wrote to the Crime and Misconduct Commission, all ministers, directors-general and 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 other stakeholders, including members of the public, who have provided written submissions to the committee to assist it in its review. The committee particularly acknowledges the assistance of the CMC chairman, Mr Needham, and 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 operation of the CMC and of the Crime and Misconduct Act. The CMC responded by providing the committee with a comprehensive submission on 31 October.

The purpose of these hearings is to hear the various viewpoints on relevant issues and to allow the committee to ask questions of representatives from a cross-section of interested organisations. The committee will consider whether to hold further public hearings as part of this review.

The hearings will commence with representatives from the Department of Emergency Services, Ms Yolande Yorke and Mr Mark Champion. This morning, the committee will also hear from Mr Greg Mackay, the Director of UnitingCare's Centre for Social Justice; Ms Marg O'Donnell, the Chairperson of the Legal Aid Queensland Board; and a member of the public. After morning tea, the committee will hear from Mr Trevor Chippendall, the Director of Ethical and Governance Services from the Department of Main Roads, and Ms Julie Cork, a former part-time commissioner of the Crime and Misconduct Commission. After that, the committee will hear further from Mr Robert Needham, chairperson of the CMC. As stated yesterday, if any agency or interested member of the public wishes to forward a written submission or supplementary submission to the committee, they are most welcome to do so.

The other members of the committee who are in attendance today are Mr Jack Dempsey MP; Mr Simon Finn, who will be attending later; Mrs Christine Smith MP; and the Hon. Dean Wells MP. We do have a few small problems with some of our members. As I said, Mr Finn will be in later as he has an electorate commitment owing to last night's storm and flooding. Mrs Liz Cunningham MP was due to fly to Brisbane today but, due to flight delays, she will be unable to attend. I indicated yesterday that Mr Howard Hobbs MP will be unable to attend owing to illness.

I now call Ms Yolande Yorke and Mr Mark Champion from the Department of Emergency Services.

CHAMPION, Mr Mark, Acting Executive Manager, Ethical Standards Unit, Department of Emergency Services

YORKE, Ms Yolande, Director, Strategic Policy and Planning Unit, Department of Emergency Services

CHAIR: Welcome and thank you for coming. Our procedure has been that witnesses give an opening address of hopefully no longer than 10 minutes. Some people have not even needed that long. Your submission was fairly succinct so your address will enable you to further outline concerns that you have and how we may be able to address them or how the CMC may be able to address them as part of this review. If that happens, hopefully we will have succeeded in our efforts. If you would like to undertake an opening address, we will take it from there.

Ms Yorke: This is a two-person show. Mark is actually a practitioner in our Ethical Standards Unit. Firstly, I would like to apologise on behalf of my executive director, Gary Mahon, who is actually attending the state disaster management committee meeting as we speak. He asked me to acknowledge the very positive working relationship between our officers, particularly our Ethical Standards Unit, and officers of the CMC. He also asked me to thank you for the opportunity to provide comment in this forum. Mark has actually prepared an overview of the key points that we have raised in our submission and I will hand over to Mark.

Mr Champion: Thank you. I am also filling in for my boss, Mr Rosenthal, who had chosen to take some leave before he knew this committee was meeting today, so he sends his apologies as well.

I suppose in a nutshell our submission focuses on the way that the department, through the Ethical Standards Unit, reports to the CMC on matters of suspected official misconduct. Just by way of background, the Ethical Standards Unit is a central body within the department which is based at our headquarters at Kedron. We have a role to be the liaison point between the CMC and the department on behalf of the director-general. Part of our role is to receive all matters of suspected official misconduct that filter in from the various parts of the organisation across the state, to make an assessment of those matters and then, if we feel the need, to actually refer those matters to the CMC as required by sections 38 and 40 of the CMC Act.

The submission deals with our views about the situation as it currently exists and as it has arisen over time in terms of how we actually refer matters. The submission suggests that some change in that area might be of assistance to our department and perhaps also to other agencies, because I think it is true to say that, despite the fact that we have been working with this definition of suspected official misconduct now for some years, we still struggle with actually applying the definition to real-world cases. We believe that with some further refining maybe not so much of the definition, which has been in the act for some time, but of the interpretations that both the department and the CMC apply to that definition—because it is quite a complex definition—we might improve the way that we respond to the CMC.

Our view is that over time we have sort of arrived at the situation where we are referring a great many matters that the department considers to be relatively minor to the CMC, and the vast majority of those matters come back to the department to be managed. The CMC refer to those matters as 'outcome advice only' matters, which tends to be the lowest form of interest that they have in a matter. Other than them saying that the matter has no official misconduct connection at all—that would be the absolute lowest—the next lowest is them saying to us, 'We are happy and confident for you to deal with the matter. We have assessed it as outcome advice only,' which means we have complete discretion to deal with the matter and we then advise them at the end of that process what the outcome was. As I said, about 90 per cent of the matters that we refer to them come straight back in that category. It is our view that we would like to, if possible, see a reduction in the number of matters that are actually being referred because of the minor nature of many of the matters that we refer.

The other thing we would like to see is just more certainty in actually applying the definition to real-world cases. We think that can be achieved again through cooperation with the CMC and agencies to refine some of those matters. The one in particular that we think some work could be done on on a cooperative basis between agencies and the CMC is section 15(b) of the act. Section 15 has two parts. The first part states that 'official misconduct is conduct that could, if proved, be (a) a criminal offence'. The second part states it is '(b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment'.

The department has a particular view about what section 15(b) means and we have noticed occasionally that the CMC have a different view. From our perception, their view is much broader than our view about what that means. In essence, the effect of that is that, if we take a very cautious approach to that, we refer a lot more matters to the CMC based around section 15(b) than we otherwise would.

Our view of section 15(b) is that we have a reasonable view based on experience and precedent of those sorts of matters that if proven would result in someone being sacked, essentially. So we are aware of those types of matters. I think the CMC's view, as I said, is much broader in that, as it has been described to me, if the matter could at all result in disciplinary proceedings then on the basis that dismissal is always an option within disciplinary proceedings the matter should be referred, regardless of whether at the end of the day there is any reasonable prospect that even if the matter was proven a person would actually be terminated.

Mr WELLS: If departments were going to filter the complaints that were made that went to the CMC, don't you think somebody would cry cover-up?

Mr Champion: We believe that it comes back to the confidence that the CMC has in a particular agency. As Yolande said, we believe we have a very good relationship with the CMC. We meet with them monthly. They have an auditing role, and just earlier this year they completed a major audit of our outcome-only cases, and that was a favourable audit. There is always the reality that people can obviously refer matters directly to the CMC—in other words, bypass the department. So we believe there are enough safeguards there to protect the integrity of the system without necessarily having to refer as many matters as we currently do.

Mr WELLS: Can I put a devil's advocate view to you. Ardent watchdogs though they are, the CMC have a much more favourable view of government departments than do the people of Queensland, who are a great deal more sceptical. The process does not exist just to satisfy the CMC but it exists to satisfy the people of Queensland. The CMC is a clinic which is capable of giving a clean bill of health to a government department. You are not capable of giving a clean bill of health to yourselves, and that is why we have the CMC. If the department itself is filtering the complaints that go through to the CMC, then inevitably somebody in the general public is going to cry cover-up and maybe you will even spend more time having to deal with complaints of cover-ups that go to the CMC.

CHAIR: Before you answer that, can I follow on from that. At what level are you suggesting that it be considered that the filtering ceases and everything goes to the CMC?

Mr Champion: So the cases that we would see as most—

CHAIR: You are talking about 'discipline' and 'minor'. Within your own department, isn't what is 'minor' really more of a subjective point of view?

Mr Champion: That is true, but then the whole interpretation of the official misconduct definition has a degree of subjectiveness and interpretation in it—when you read section 15(b) in particular. All I am saying is that we need some more certainty about how we define what is really significant. I think the intention of section 15(b) is that it is relatively significant matters that would fit in that category, because it talks about 'reasonable grounds for terminating the person's services'.

CHAIR: But there can be relatively minor matters which can be grounds for terminating services.

Ms Yorke: Do you want to talk about some of the scenarios that we worked through?

Mr Champion: We have a couple of examples of cases—

CHAIR: Thanks, Mr Champion, that would be of assistance.

Mr Champion: Would that be useful, without mentioning specific names?

CHAIR: Yes.

Mr Champion: The first one is an example of this exact point, of section 15(b) about reasonable grounds. It was an ambulance officer driving an ambulance vehicle at night. He used his lights and sirens—I'm not sure about the sirens but certainly his lights—to pull over another motorist so that he could have a go at her for driving in an erratic fashion. Apparently she was driving too slowly and her high-beam headlights were on. So he was on duty, he was travelling somewhere in the vehicle and he pulled her over.

The other motorist complained to the department about that ambulance officer's conduct and the matter was referred to the Ethical Standards Unit for assessment. Our assessment was that, even if proven, that officer's conduct would not reasonably result in the termination of that person's services. It is more likely that if the conduct was proven he would be probably formally counselled—which is the term that we give—or at the very most disciplined with a reprimand or something of that order.

We were fairly confident at the time that that matter did not need to go to the CMC. However, in subsequent discussions we did raise it with the CMC out of interest and the CMC's view subsequent to that was that the matter was suspected official misconduct under their definition. The reason given to us was relating to section 15(b). Their view was that that conduct provided reasonable grounds for terminating that officer's services. So I suppose that is just making the point that we struggle particularly with that aspect of the definition. What we are seeking is some clarity, I suppose, and some more certainty about using that part of the definition. I wouldn't even say it is about trying to filter matters. We are quite comfortable and happy to refer matters of significance to the CMC, and we have found that they have been very helpful to us in getting through some very difficult cases in the past.

CHAIR: I go back to my original question. What are matters of significance and what are minor matters?

Ms Yorke: So do you want to now outline some of the serious—

CHAIR: I have some difficulty with the filtering. I will be up-front about it: the same difficulties exist between the CMC and the QPS with matters of discipline and matters of official misconduct. As Mr Wells said, if a public body is charged with meeting the aspirations and requirements of the people of Queensland, isn't it reasonable to require them to look at everything? The confidence of the people of Queensland is what they are here to ensure.

Ms Yorke: If I could just interject at this point.

CHAIR: Yes.

Ms Yorke: In my area we have led some work into strengthening our complaints management generally. So it could be a bumpy ride in an ambulance. It could be that Mrs Jones isn't happy about the levy or how the levy is being spent, or matters of that kind. We will have a capability for people to lodge a complaint online and there will be a mechanism to manage that. We are working with Ethical Standards on a database so that we can capture that as well as the more official complaints. But certainly in terms of people being able to express dissatisfaction or make a complaint, probably to capture some of those less formal complaints we have actually strengthened our governance arrangements around complaints generally.

CHAIR: I have a little difficulty with the basis on which you have just put that, though, because some of the things that you indicated were clearly not caught by section 15—for instance, how the levy is spent and whether or not the levy is imposed. They are all matters of policy which are set out for your department by legislation or by regulation. Section 15 does not even come close to referring to those sorts of matters. I would have thought even a bumpy ride in an ambulance would not be caught by section 15, although I could be convinced otherwise if it were me. But that then would be a subjective point of view. But I go back to my original question: who determines the seriousness? Who determines where the cut-off point is? At the present time your department has that buffer, I suppose. Mr Needham, the commissioners and people from the CMC might not appreciate this, but they are the punching bag, so to speak, that has been set up to make sure that what is done is done very correctly and very specifically by your department.

Mr Champion: And we would agree. All we are saying in the submission is that we are seeking some greater certainty around these sections that we are talking about when we apply them to real-world cases. You asked the question about who makes those determinations about seriousness. We have to make those determinations on a daily basis. We have a daily assessment meeting. As all the complaints and issues are coming through into the organisation, we meet as a group to make those calls. Sometimes we get those calls wrong and sometimes—most of the time—we get them right. We appreciate that there will always be grey areas around applying a definition of this level of complexity to real-world cases, but even after using the definition for some time, as I have said, we still struggle with applying it.

Mr WELLS: You believe that 90 per cent—I am sorry.

CHAIR: No, you are right. That raises another query, but you may answer the query with another question.

Mr WELLS: Why take the punt? Go ahead.

CHAIR: You mentioned holding a daily meeting. At those meetings surely you are dealing with disciplinary breaches. You are talking about a disciplinary breach which provides grounds for terminating services if they are the holder of an appointment. Accepting that most of the people, if not all of the people, under your control are the holder of an appointment, then you are dealing with disciplinary breaches which would support termination. I would have thought the general law was sufficient to determine whether or not a breach was severe enough to warrant termination. It may well lead to some discussions later with the CMC if that is found to be wrong, but I would have thought that a decision by your committee, your meeting, that that was insufficient to be grounds for termination under the general law would not make it official misconduct.

Mr Champion: Yes, I agree. All I am saying is that the CMC have occasionally disagreed with us on that point.

CHAIR: All right. To go back to my original question, where do you set the bar? And how do you suggest that we consider resetting the bar?

Mr Champion: That is very difficult to answer because we literally every day have cases of different nuances and different circumstances. Some of them are complaints that are three or four pages long and have to be read through; others are extremely brief. What we are receiving every day is the very minor matters that the committee considers to be quite minor matters, that managers should be able to deal with in their everyday run-of-the-mill operations, and we refer those matters back, right up to matters that we think are matters that, if ultimately proven by investigation, may lead to the termination of that person, or there is a reasonable prospect even if that does not happen. So there is a huge array of matters that come in. Without a shadow of a doubt, with five or six people around a table you will have six or seven different opinions about the significance—

CHAIR: Are they all lawyers?

Mr Champion: No.

Mr FINN: Like yourself?

CHAIR: I am a lawyer so I do not have any hesitation in asking the question.

Mr WELLS: And I agree with him.

CHAIR: Even in what you say, I still have a real difficulty in where you want to set the bar, because inherent in your own comment and factually you have said that you are making the decision about whether or not they are minor matters, whether or not they are disciplinary matters and where they go. If there is to be some differing appreciation of that, where do you set the bar? You are already setting the bar and you are setting the bar with your meetings as to what you send on. If there were guidelines that say, 'We can raise the bar two notches,' what difference is that going to make to the considerations that you give? The difficulty is that, as I said in my opening statement, we have to recommend possible changes that will enhance the work of the CMC to meet the expectations of Queenslanders and also to make sure that our departments operate efficiently within that framework. Just to change it so that it will provide those guidelines would seem to me to be outside the scope of what we need to do. I personally believe that what is there now—and unless you have any particular argument to raise it—is meeting your department's requirements.

Mr Champion: As I said earlier, we do not have an issue with the definition, accepting that it is a complex one and we just have to live with that. It is more about the interpretation of those sections, particularly 15(b). That may be just a matter between the CMC and agencies to strengthen the understanding of what is expected there with that one. But I do believe the threshold is very low in terms of our experience of how the CMC is currently interpreting section 15(b).

CHAIR: It has been suggested in some other submissions exactly the same circumstances, but I think the same comments made to you are equally relevant to them.

Mr WELLS: So you reckon about 90 per cent of the cases that you send on to the CMC are trivial?

Mr Champion: I wouldn't call them trivial, but I would say that 90 per cent of the cases come back to us to manage at our own discretion and they are seeking outcome advice only.

Ms Yorke: And the other point is that it is a timely process. To have, in the main, something that ultimately is not substantiated—I think we have a fairly high rate of unsubstantiated claims—that is quite a long time to have something hanging over the head of somebody who is ultimately cleared. That is an issue that we would like to raise as well.

Mr WELLS: It must be very irritating that a high proportion of the complaints that you get are trivial or they are unsubstantiated or they are brought back to you rather than sent to the CMC. However, what you are convincing me of, at least, is the need for a filtering device but you are not convincing me that the filtering device ought to be in the department by virtue of the fact that I just cannot see that your department can give your own people a clean bill of health because of the scepticism endemic in the Queensland populace.

Ms Yorke: There was another issue, too, that we did not actually raise in our submission and that is always having the open book—that is, we would certainly welcome the CMC to access our files at any point that they actually request access to do random audits or random sort of assurance testing as well.

Mr WELLS: What information do you send to the CMC with the complaints that you forward on?

Mr Champion: We fill out their standard referral form which basically covers off on the name of the alleged subject officer, a precis of the complaint, their date of birth, any contact details we have for those people, details of witnesses, any action that we have taken prior to referral and whether we have an opinion about whether we can deal with the matter or not. So we normally tell them what we think should happen to the complaint: provide our opinion on that matter. There is a formal standard template that normally attaches to a complaint.

Mr WELLS: You actually give the CMC information which goes to whether you think that there is any substantiation of the complaint?

Mr Champion: No, we are not supposed to do that. We have to refer matters on the mere suspicion based on the allegation rather than any substance or whether we think the matter has any substance. No, we do not talk about substantiation.

Mr WELLS: Do you send relevant papers from the department?

Mr Champion: I am not sure—?

Ms Yorke: It depends at which point in the process. We send entire files over, but that is in—

Mr Champion: In terms of a complaint, normally we would send, on top of that template—if there was a particular complaint that had been written by a person or any information of that nature, we would normally attach that to the complaint.

Mr WELLS: Does somebody sift the file and say, 'This might be relevant to it'?

Mr Champion: Before we send the material over?

Mr WELLS: So that it is sent to the CMC.

Mr Champion: Basically we send whatever we have immediately that we are aware of the matter. So the matter does not rest with us for any sort of length of time. So as soon as we have a complaint—it might not even be a complaint, it might be just information—we are obliged to refer that material to the extent that we have knowledge of it at that time without doing any inquiries.

Mr WELLS: I am aware of cases years ago where asinine allegations were made against a minister. The director-general or some other officer sent documents that created a web of circumstantial implications, but failed to send a document which in one blow would have demonstrated that there was no basis whatsoever in the allegations. It was not noticed. Presumably this sort of thing happens from time to time. The question is: how thorough is your department in checking the files to see if there is a document which would enable the CMC to simply write back and say there is no basis for it?

Mr Champion: The act allows us to actually refer to departmental files as long as that information is immediately available. So, yes, we can do that, but if that involves any type of inquiry at all then that is not included. If it is information immediately to hand on a database or in a file that conclusively proves that the allegation is false or has no substance, we can supply that information immediately.

Mr WELLS: If the allegation, for example, was that somebody failed to do something at a particular point in time that they were statutorily required to do and if there was a document on the file that testified that they did and that was sent to the CMC then the CMC could just tick the box, send it back and say 'no case to answer'. Or, alternatively, if the person themselves had evidence—do you call in the person and say, 'Have you got any evidence that would fell this CMC inquiry in one blow? Have you got a document that I can send, for example, your notebook, that shows that you did do X at such-and-such a time?' Do you ask questions like that?

Mr Champion: Normally, no. We would not normally speak to a subject officer in that way. However, if it was obvious that there was a document or information immediately available to the department in its files, in its records or on its databases that proved conclusively that that matter could not have happened, we would not even be obliged to actually refer that matter in that case if we were satisfied that that could not possibly have happened. I think that the example the CMC gives is if someone makes an allegation against an officer in Australia and the allegations relate to a particular date and departmental records prove that that officer was overseas at the time and could not possibly have done that particular conduct on that particular date then that is an example of information immediately to hand to the department that the department could use to decide not to actually refer the matter.

Mr WELLS: If a complaint is made against one of your officers, is the officer told that a complaint has been made and are they invited to provide any evidence that you can then send on to the CMC that would establish their innocence and thereby save the CMC the time of an investigation?

Mr Champion: No.

Mr WELLS: I am aware of cases where public figures have been referred to the CMC and they did not know for six months that they were referred to the CMC but they always had in their possession documents that they could easily produce that would establish their innocence and would have saved the time of the investigation. Is there some reason why you do not have a protocol of advising the person who has been referred to the CMC?

Mr Champion: It is partly based on the obligation to refer the mere suspicion alone. The normal approach taken in house, particularly if it is a highly sensitive matter, is not to advise the subject officer up-front but to wait for the assessment of the CMC as to how to proceed.

Mr WELLS: Have you ever had any indication from the CMC that they would wish that you did not advise the subject officer that a complaint had been made against them?

Mr Champion: Whether they had told us not to advise?

Mr WELLS: Yes.

Mr Champion: To my understanding, it is just a principle not to advise a subject officer up-front about a suspected matter that is referred to the CMC.

Mr WELLS: A principle deriving from statute, deriving from practice, deriving from the metaphysical nature of the universe?

Mr Champion: I think it comes back to if the matter comes back for investigation it is important in a lot of cases that the subject officer is not aware. I suppose there are three different stages to those types of investigations. There is the covert stage where very few people know about the matter and then subsequently the matter is opened up and you start to interview witnesses and so on. Normally the subject officer is the last person to be advised and normally the last person to be interviewed, although not always.

Mr WELLS: Surely this would be the source of a waste of a great deal of time, would it not? I am interested in this. You are telling me that 90 per cent of the cases are cases that you do not think should go there in the first place.

Mr Champion: I am not saying that. That is just a statistic to let you know how many matters are coming back that are of a relatively minor nature.

Mr WELLS: Ninety per cent of them come back that the CMC thinks can be handled by you. In none of these cases is the protocol followed whereby the officer is told. In many of those cases surely the officer must have information in his or her hot little hand that they can produce that will establish their innocence in one go and save this fatuous round robin of documents going off to the CMC and coming back to you.

Mr Champion: In some cases that may be the case, that they may be able to do that, but it is our understanding that we have to refer on the mere suspicion without making inquiries of that nature.

Mr WELLS: This is indeed an understanding that is widespread throughout government and it may very well be this practice that is wasting an inordinate amount of the CMC's time and causing an inordinate number of delays. I have found your information on this subject really, really helpful. Thank you.

CHAIR: We are out of time. Thank you very much for your input and we certainly will take on board all of the matters raised. We have to call stumps.

MACKAY, Mr Greg, INCorrections Network

O'DONNELL, Ms Marg, INCorrections Network

CHAIR: I apologise. We are running a little over time. We will, however, accord you the time that is necessary for consideration of your submission. What our format has been is to ask people appearing to make an opening statement of reasonably short duration—we have had opening statements of up to 10 minutes; you do not necessarily have to take all that time—and then to speak to and to discuss those areas of the submission that you want us to consider.

Mr Mackay: I am sure you have not had a chance to read all of the attached reports. I will just remind you, if I could, in a couple of sentences, why the investigation we did, the research we conducted, came about. It came about because of a couple of things. First of all, people's observations that life on the ground was changing in terms of how people who are fairly marginalised, often experiencing homelessness and so on, were experiencing contact with the criminal justice system. We had been seeing, too, the changes in interaction and policing behaviour generally once we saw the new legislation around the public space and move-on powers. So because there had been all of those things happening we decided we would have a look at that because clearly we already know through many other reports that people are poor, there is lots of poverty around, and they are the people that come in contact with the police largely, those 70 or 80 per cent or some huge number. So we asked ourselves that basic question: what is the relationship here between the experiences of these people and the criminal justice system—of course, the police in this particular matter before you.

The work we then did was twofold: we knew it was very important to hear from the people who were experiencing contact with the police and we also wanted to hear from some of the professional people. That is why we conducted the research around both speaking with those people who were experiencing homelessness and professionals, whether they be judges or lawyers or non-legal support people in that sort of field. What we have observed is that in a lot of the work we do it can become quite problematic because we say something is wrong and, of course, whoever is receiving that is saying, 'Hang on, don't be a nuisance and annoy us.' It is a reasonable response; we get that in many areas. What we have been trying to do in the past year or two is find other ways to engage with people.

There are couple of brief examples I want to give you. One relates to police and the other relates to juvenile detention. While it is not the focus of this inquiry, I want to give you examples of how we are trying to engage differently and would welcome possible changes out of this work.

One of our partners in this report has taken one element of this report—that is, police training in relation to understanding who some of these poor people are, what they are experiencing and what their behaviours may be about; for example, people with a mental illness, people with an intellectual disability and so on. One of our partners, Adrian Pisarski from Queensland Shelter, has started work with the police to contribute to police training at the college level. That is where people get some sense of what might be possible. Then we have observed the resulting problems which are that people then go out and start working on the beat and their minds are changed. That is the second part of the work that we might like to do. It is engaging with people that we think is important. Without going away from this report at all, we still think we have to be a bit more solution oriented.

The other piece of work we have started is looking at the inappropriate level of juvenile remand. We have proposed doing some work with communities and some Aboriginal groups in the St George area so we can look to solve some of the problems—that is, that there is nowhere for people to live that is acceptable to the courts—rather than it becoming a problem at the court, kids go into remand and people like us get up in arms because we have 90 per cent of detained juveniles there on remand. They are two examples of how we would like to try to move forward. We think that this review of the CMC makes it possible to look at the matters we have raised.

Ms O'Donnell: I would not mind taking you back a bit. There is a list in our report of the agencies that commissioned this research. It is pretty wide and includes a lot of agencies like Family Planning, Centrecare, Pastoral Services, INCorrections Network, YWCA, some Indigenous NGOs et cetera.

The methodology, whilst not vast, was that we did interview about 131 homeless people and 54 people working in the area. Our concern then, and even more so now, is that these are people who, whilst they do not like the term poverty, live in poverty or live in straitened circumstances. In the 12 months or so since the report was completed we see that cohort increasing because of ordinary factors. We believe the financial crisis will lead to greater numbers of people who are in straitened circumstances—people who are reliant on unemployment benefits et cetera. Certainly the groups of Indigenous people and people with disabilities is increasing as well.

The other thing that has happened in recent times, that I probably do not need to draw your attention to, is that there has been a lot of profiling of police behaviour in relation to homeless people, people in public spaces. Of course there was the Palm Island case. The initial step was a police officer engaging with a member of the public who was causing no harm, in some people's estimation, but that person was taken in and there were catastrophic results.

Very interestingly and depressingly, last night there was a news item on ABC News about the New South Wales government's review of taser guns. The state Ombudsman sounded some very strong warnings about the use of taser guns and gave an account of one person who died 12 days after being

tasered. Very embarrassingly for Queensland, the footage they used was of a group of three or four police officers in the mall holding down a person and applying the taser gun to someone who was already subdued and lying on the ground. There was the case quite recently of the very slight 15-year-old girl who was held down and tasered by police at South Bank. There was also the case of the homeless man in the mall who was held down by a number of people.

Part of our concern is the harm done to homeless people by these sorts of behaviours. Our concern also is that police KPIs somehow assist or reward this sort of behaviour. Our concern and interest is to look at ways police can be rewarded for community engagement activities, for education, for meeting with these key groups and trying to forge helpful relationships with them rather than being rewarded for punitive approaches.

We did not get much of a hearing from the police commissioner or the police minister when this report came out. The police minister's response was that if people have complaints about the way they are treated by police—and this report was about policing, courts and corrections, but the policing aspect of what we found was by far the biggest problem area—then they can complain. What we found is that these are the people who often do not complain. They are marginalised, they are not terribly literate, they feel excluded, they do not feel confident. A lot of their experiences with bureaucracies are fraught and often uncomfortable.

One of our suggestions in relation to the CMC is maybe having an incident register. We can explore that a bit. We need to have some way that people can register what is happening to them without necessarily having to be fearful about having to go through an adversarial questioning type of process.

CHAIR: While you are on that subject, how would you propose to do that if they have a fear of doing it anyway at any level?

Ms O'Donnell: One of our suggestions is—and it is in our report—to have something like an incident register. Some way of noting—

CHAIR: How do you get those people to put it on that incident register when they are fearful? I hear what you are saying and I appreciate it. There is no attempt to do anything now. Even though it may well be baffling—and I appreciate that it is very baffling to a lot of people—how do you get them to put it on the minor incident report?

Ms O'Donnell: A number of these people—and this is how we found them—are connected with NGOs in the community. For example, in the Valley there is the Brisbane Youth Service. The kids who associate with that service completed our survey for us. You may well look at some of the key organisations that service homeless, youth and Indigenous people and they could develop their own register which they could then convey to either the CMC or some central body. I think you would have to work through the NGOs. I do not think you could have a list in some neutral place.

CHAIR: How do you ensure the integrity of that document as taken forward by that organisation?

Ms O'Donnell: You have to set up some systems, I suppose. My sense would be that those organisations would not be averse to this at all. I think they have been looking for pathways to be able to convey information across to the appropriate and relevant organisations. Is that your sense, Greg?

Mr Mackay: Absolutely. There may be other associated legal organisations that can assist. What I would say about people giving their story is that that is always going to be fraught. If they are doing that with providers and people who know them then there is an ability to encourage sensibleness. What I observe through years of this is that we do not have providers running around trying to stir people up to lodge complaints. One of the reasons for that is that they are sensible people. Why would people want to potentially cause a great deal of trouble for a homeless person by elevating their complaint to a level that is not justified?

CHAIR: Some of the community perception that comes back to me—and I speak personally here and not on behalf of any committee member—is that there is a small number of groups who maintain their existence by doing just that. I would like to see what proposals you have for a protocol that I mentioned to Ms O'Donnell. I have great sympathy and I do give a lot of personal support, given my background, in the areas that you are talking about. I do have some reservations about just putting in a complaint because there are some—as I said, a small group—who really use that as the reason for their existence.

That certainly reflects on the large number of very good organisations that are trying to get people out of those circumstances. It reflects quite badly when they are not even involved in this sort of thing. I just want to explore with you what protocols you would consider being put in place. The CMC is certainly charged with ensuring that the police and units of public administration, such as the Department of Communities and Disabilities, act appropriately because those are the areas where the people that you represent—those marginalised people—go for assistance. I just want to explore the relationship and how what we would be considering for the CMC would impact on the people you represent.

Ms O'Donnell: Can I say a couple of things about that. I think every organisation has some sort of complaints register. Every government department and statutory authority receives complaints. It is understood that some people are going to complain because they like to complain or they are troublemakers or they have a grudge. I think every organisation has that sort of understanding.

The model we are talking about, if it were to go through some of those recognised NGOs—UnitingCare, Anglicare, St Vincent de Paul et cetera—you are not going to abolish the vexatious complaints but you have some sort of filtering process. You would then analyse trends. If you are getting a trend that a lot of people are experiencing move-on powers in the mall, accompanied with strong-arm tactics or whatever it is, and they are coming in from a range of different agencies and they have clusters of behaviour, you would then analyse the trends. The whole idea of having a register is that you cannot then go out and do the specific investigation because the person did not want to be named, say. It is really an analysis of trends. You would factor in that there is going to be some vexatious behaviour.

CHAIR: That was what I was trying to convey. There is always going to be that percentage. Only in statistical possibilities can you exclude a small percentage as being that way inclined.

Mr DEMPSEY: I turn to police training. In your submission it is apparent that people experience different types of problems in certain areas—Townsville, Brisbane and so forth. What type of extra training would you like to see police do in relation to an understanding of NGOs and to increase their confidence with NGOs? What other possible links would you like to see between police and NGOs and Health, Education and Housing with NGOs? What sort of informal statistical data would you like to see that could be used for strategic planning? Those people in NGOs would have a chance of being heard or know that they are not being ostracised even further. Do you have any thoughts on that?

Mr Mackay: There are lots of opportunities around that. One of the best examples over the past 2½ to three years has been the mental health initiative within the police—just the way the police have come to understand critical incidents like that rather than having to go to a much more aggressive and violent form of resistance—and that can be done right through their training. It does not need to be extensive and costly to cover the groundwork. For me, by people getting some exposure to who these people are and what they are like and what they are trying to do—they are not dangerous criminals—and who the people are working with them and vice versa, because often NGOs do not really understand some of the pressures on police and what they have to live up to, I cannot see any way that that is not going to make an improvement. But the problem would be trying to use stats that say that there are fewer charges or fewer something else because of that work because there are so many other things driving that—whether it is the way we hold police accountable and charge at the highest rates so you get a bigger tick than putting a smaller charge on when pulling people up and so on.

So what we have to be saying is, 'So what are the police doing? There's the outcomes.' It is going to be, 'Where are you relating? Who are your partners? Who are the people or the numbers of people you're avoiding getting into the system?' That has never been done. It is always about, 'Who do we flog?', to use a colloquialism. At the moment in UnitingCare, when you think about the increasing poverty and financial crisis, there are only 32 financial counsellors—I do not mean advisers that you and I might go to but financial counsellors—in Queensland. I am sorry to insult you with that. Some people—

CHAIR: No, I appreciate what you say. There are fewer and fewer available.

Mr Mackay: Yes. Most of the 32 financial counsellors in Lifeline are finding a massive increase in numbers and are just turning people away. What we are trying to do there is understand the effect of the work we do, and it is the turning away that is a completely different kettle of fish. We do not know the impact of that. It is sort of the reverse of the police thing, if you like. We are turning away 100 people, so what does that do? Even though I do not work in a hands-on way, just because of where my office is located I bump into numerous people who are being fined. There is probably going to be a fine to follow that. They do not know what to do. They cannot get assistance to deal with that. That is something financial counsellors can do. Other people do it. ATSIILS do that sort of stuff, but many people do not get that support. So you can see the trend: you get into a bit of trouble, you have no-one to advise you about that and the next thing you know you have not paid your fine because you just do not have the nous, even if you have the money. Then the next thing is that you are in jail for eight months. And then what happens? It is just a downward spiral. So I think there have to be ways we can look at the positive or the avoidance effects. If we do not do that, we are not going to ever really know how well we are doing.

CHAIR: Just to follow through with one comment, there are very few people who are today imprisoned because of nonpayment of fines. SPER has really overtaken the existence of those one-, two-, three- or five-day jail sentences for small infringements. How does that put those people back into the system whereby there is some concern about the circumstances? I acknowledge—and I think most people on the committee, if not all committee members, would acknowledge—that we have a society where there are a greater number of people today who are living in poverty or in strained circumstances. That may well accelerate. But in terms of what our considerations are, we have to deal with how those people may come into the criminal justice system, how there may be an impact on them that would have a relevance for the units of public administration—and I can think of a number of them that would be involved with what you say—and how the CMC, in terms of their role as ensuring integrity within the Public Service units of public administration and within the Police Service, can impact on those people who are suffering poverty. I just do not have the connect at the moment.

I was really intrigued to read your submission. A lot of it does go to poverty but, in terms of what Ms O'Donnell said, it is those people who fall through the cracks with your helping groups who become homeless, who become marginalised, who are street people, who can suffer the impact of being pulled up

five times in one small stroll because they look 'scruffy' and because they look 'different', and that may be for a variety of reasons. It may not even be because of poverty. There may be mental health circumstances. But they are pulled up.

It is the concern—and it is a personal concern for me—that those people get treated differently to anyone else because of their ethnicity or because of their appearance. If there is no violence, if there is no problem, very often there can be very caring police officers who speak to those people on the basis that it may be to their advantage that they not be on the street, and I know quite a number of police officers who approach it from that angle, although the CMC are seeing officers who do not approach it from that angle. How do we make the circumstances better for those people? I think it goes, as I said, a little bit further than the ones you indicated—that they have fallen through the cracks, they come back to some of the people who the Legal Aid Office would see in a slightly different way but would or may enliven the jurisdiction or the oversight of the CMC because of what is done to them.

Ms O'Donnell: Could I take us back to the issue of training, because I think it is germane to you and some of those other things. I will give you a quick example. I recently did a piece of research on a mediation that occurred in New South Wales between an Aboriginal family and all of their neighbours in the street. There had been 160 police visits to that street and to that family—a family of six kids.

CHAIR: I think that may have made either *Today Tonight* or one of the—

Ms O'Donnell: The report is about to be coming out. What happened was the police Aboriginal liaison officer knew about, because he had training, community mediation services, which Mr Wells set up here in 1990.

Mr WELLS: You did, actually. I just made you do it.

Ms O'Donnell: Yes. But what happened was finally, after six months of a lot of police action and a lot of harassment and a number of arrests of members of the family, the police referred the matter to mediation and the neighbours and the Aboriginal family met and forged an agreement and peace descended upon the street. The police officers said they would have come if they were invited—and I thought they should have been invited to the mediation; they did not come—but at least they knew about mediation and they knew its value. The police officer who had referred it had been involved in youth justice conferencing. So I am not sure that a lot of our police officers—and this is just one example—even know that there is such a thing as community mediation or see the value in bringing parties together to resolve conflicts rather than arresting them.

Apart from bringing relations in the street to a better level, this stopped police action and they felt good about the police. They were pleased that the police had referred the matter for mediation. So there needs to be training in what is available in community resources—and you mentioned Health—such as health services, home care services, mediation services and financial counselling services. I am sure a lot of police officers do not know and could benefit from that sort of training.

I think the other thing—and we have highlighted it in our report—is that poverty and mental illness often produce very bad behaviour. People get aggressive and angry, rude, frustrated et cetera. So there also needs to be some sort of psychology/sociology training for police officers. I might just add that after the Fitzgerald inquiry, which mandated six months training for police officers, I sat on the QUT justice studies advisory board and we monitored that. Of course the police officers did not like it at all. Every incoming police officer had to do six months of university training in psych and various things. In fact, one of the reports said that they wished they were out on the police range practising—this was one of the quotes—their marksmanship rather than doing the training. That got dropped. I do not know whether you need to mandate a unit of tertiary education for all incoming police officers. I would like to, but you might at least insist—

CHAIR: Sometimes the wish differs from the capability.

Ms O'Donnell: Indeed. We could sit here and put out a curriculum, but I think—

CHAIR: No, we cannot. We will run out of time; I am sorry, Ms O'Donnell. But I hear what you are saying. Can I just explore that slightly further. In terms of that training, as you are aware, the CMC also have another capacity—not just to investigate crime and misconduct. They undertake training and they undertake capacity building within departments, including and in conjunction with the police department. If you would like to make a supplementary submission in relation to this, please feel free, as I indicated in my opening statement, so that that could assist the committee in consideration of the way we may be able to recommend or consider recommending that the CMC's educational or training area could be enhanced—it may have to be enhanced by funding—so that they can, in conjunction with those departments, endeavour to raise that awareness. I do not know how some of that can be achieved because very often the people of whom we speak do not read newspapers and do not listen to radio. They only have the information that is given to them by those helping groups that Mr Mackay mentioned.

Ms O'Donnell: I think we would be keen to do that.

CHAIR: It really needs to have some consideration. I think it is probably wider than just your submission here, but if I could just channel you into some consideration of that so there is what we can consider as a committee and talk to the CMC about to recommend to government whereby we may be able to take a lot of the difficulties out of that sort of relationship.

Ms O'Donnell: Yes, indeed. The other thing we would like to see is a review of the KPIs that police officers labour under. I do understand that it is a tick for them the higher the quantity and the quality level of charges that are laid. So, for example, there are a lot of people charged with attempted murder—and I know that I am moving into the more serious crime here. It is very rare that that quantity gets convicted for attempted murder, but it is in police officers' interests to find the most serious charge that they can bring against someone. They actually get as part of their, as I understand it, performance review rewarded for that. We would like to see rewards for community building and for engagement with people, particularly for junior officers.

CHAIR: I am not aware of that set of circumstances, but I accept that you may have some detail of that, and that in itself may have some bearing on training.

Ms O'Donnell: Indeed.

CHAIR: The CMC may be able to deal with the police department on reformatting or refocusing that. I appreciate it is up to you, but I certainly would appreciate your consideration for at least an explanatory or follow-up submission in terms of some of that area.

Ms O'Donnell: Okay. We would be happy to.

CHAIR: At the moment your submission relates very much to the report that was prepared and the background to it. I think it has opened up possibly a can of worms. It may have opened up a need for something to be done in a different area which we as a committee need to look at.

Ms O'Donnell: Indeed. Can I also say that I am not speaking on behalf of Legal Aid today.

CHAIR: No, I appreciate that.

Ms O'Donnell: I am chair of this INCorrections group, but I am not speaking on behalf of Legal Aid.

CHAIR: No, I appreciate that. Your submission was under INCorrections and perhaps to have you set as the chairperson for—

Ms O'Donnell: Legal Aid might make another submission at a later date if you wanted us to.

CHAIR: We have invited later submissions. We have slightly truncated the time frame for this and that is open to other groups, but thank you very much.

Mr FINN: Thank you for bringing this report back in front of this committee. I have been aware of it and it is a good report. Given that we have had a broad-ranging discussion here, one of the issues I am very concerned about is the use of move-on powers. There has been a bit of tension in the CMC about reviewing the move-on powers. I am just wondering, given we have this opportunity, whether you have had any current anecdotal or statistical information about move-on powers in recent times? There was a lot of pressure in government about them being applied appropriately. Is there any change that you are aware of on the street that they have been better applied, or any differences?

Mr Mackay: I am not aware of changes either way.

Ms O'Donnell: All I can say anecdotally is that there has been no trend downward and, in fact, we quote in our report that the last police report was that there had been an increase in police arrests under the whole bunch of good order matters, which include the move-on powers. Certainly, with those high-profile cases of people being manhandled by police officers, there seem to be more of them—whether that is because more of them are being reported or whether that is because we have CCTV cameras everywhere and it is hard to make a move without being picked up. Certainly, the feeling of our client group is that there has been no easing of that situation. Police seem to feel that they can just tell people—and they can—to move on, because they do not want them standing in a particular spot.

Mr Mackay: My answer referred to the period since the report because it is now 18 months, but I totally concur throughout. The author's findings are very much an increasing problem around that. Whether Tamara has done work since then, I do not know. She is certainly staying abreast of all of that. So if there is anything being done, we can advise you.

Mr FINN: I do not know whether it is relevant for us, but I would be very interested in any update on those recommendations and anything that has been implemented.

Ms O'Donnell: Actually, Legal Aid would have some information on that.

Mr FINN: Or has not been addressed by government—perhaps separate to this. I would be interested in an update on those.

Mr Mackay: Since you are open to additional submissions, you asked a question about the protocols in terms of an incident register. I do not know anything about that. It is not my expertise, but we have two particular areas that Tamara and others have studied. That is in the report on page 77. I would be happy to see if they can put something fairly brief together about how they operate those systems in the States and in Canada.

Mr FINN: To the extent that this review is about the CMC Act and the legislation governing the CMC, that is the pertinent recommendation. That would require us to make that significant recommendation about change. So any detailing of the protocol for that would be very useful for us.

Ms O'Donnell: Yes.

Mr WELLS: Further to the member for Yeerongpilly's question, the extent to which the use of the move-on powers gives occasion for the subsequent application of the trilogy: obstruct police, obscene language, resisting arrest—

Ms O'Donnell: Yes, and certainly our anecdotal experience and that case with the young 15-year-old girl who was tasered who was waiting with a friend who had passed out—she was asked to move on. She did not move, so she had then disobeyed a police direction. She obviously sat there and said—actually, Legal Aid appeared for her, so I know a bit of her story—'I'm not moving.' So she was then pushed to the ground and held down. Because she sort of fought back—this is a slight 15-year-old—she was then charged with resisting and obstructing. So there we go. There is a suite of charges really, which got thrown out by the magistrate. You are right: the move-on powers are, in a sense, a trigger sometimes for all the rest that follows.

Mr FINN: Yes. You mentioned the word 'taser'. I was not going to mention that. The CMC has done a fair amount of investigation and had a bit of to-and-fro with the Police Service—I think that is even reported in today's *Courier-Mail*—over tasers. One of the issues that I really have is drafting policy for the use of what is an additional police weapon. I have concerns about that. So anything that your organisation can pick up about the use of that—if it can be fed back in, it is useful to the CMC's work, and, indeed, our work.

Ms O'Donnell: In fact, the New South Wales Ombudsman described it as a lethal weapon, which was interesting.

CHAIR: Sadly, the evidence that has been produced seems to be that if somebody does die from it, it is a substantial time afterwards and it is not able to be isolated as having been from that weapon that was used, as you mentioned, 12 days later. It may well be from a variety of other illnesses. They do not fall close together to give sufficient hard evidence, I suppose.

Ms O'Donnell: Indeed.

Mr FINN: I will just say this very quickly; I know we are very short of time. The concern is that it is very easy to write policy in one mode if the taser is used as an alternative to a firearm, that is, it is fired from a distance to assist in resolving a volatile situation. That is one thing. You can write similar policy to drawing a weapon for that use. It is the stun use—when it is used to inflict pain more than anything. That is a very difficult area to write policy on, because also my understanding is that the use of the taser in that mode is that it is not recorded whereas the use in the other mode is recorded. They are shaking their heads up the back.

Mr Needham: No, it is recorded in both modes. How accurately it is recorded, that is a different matter, but it is recorded.

Mr FINN: But that is my concern—where in good old-fashioned community policing you give a kid who is giving you a mouthful a lift home. Nowadays you might inflict some pain along the way in a different kind of way. So anything that you pick up through your organisation about that we are very interested in.

Ms O'Donnell: Could I just make one other quick comment? When I was running the government's dispute resolution service in the 1990s we did for a while have—in fact, it was set up by the CJC in about 1991—a police complaints mediation service for small matters. So if someone did have a complaint against a police officer, they could come to a structured mediation. In fact, we had a very famous case where a police officer shot at a young couple, thinking they were leaving the scene of a crime and they were just returning some document to her workplace in the city. They were very upset about it and we brought together the young police officer and a member of the police union and the couple. They explained their stories to each other. The young police officer was frightened and felt that they were criminals et cetera. I must say that that seemed to be quite a successful service. Then the police stopped participating because they said they were going to do their own handling of their own complaints. I have lost the plot in terms of what has happened since then, but—

CHAIR: You lost track.

Ms O'Donnell: I lost track, but those sorts of measures might well be looked at again, it seems to me.

CHAIR: Okay. Sadly, we have extended possibly over time—unless Mr Wells wants to expend a little more time?

Mr WELLS: What would you most like us to do?

Ms O'Donnell: We would like you to recommend that the CMC have some sort of inquiry. We are not talking about a Fitzgerald-type extensive inquiry but have a look at community policing, particularly in relation to marginalised people—the sort of move-on powers area. We would like you to explore the issues of training and also police rewards. We understand police have difficult jobs and we would like to look at a system where they get rewarded for diversionary activities, for community capacity-building activities. So if in some sort of way police could have incentives that could be mandated, I think we would be very happy.

CHAIR: Thank you very much, Ms O'Donnell and Mr Mackay. You may take the opportunity to have morning tea. I know that we have witnesses to hear, but I think we will have a short break for morning tea.

Ms O'Donnell: Thank you for your time. We really appreciate the opportunity to come and speak to you.

Proceedings suspended from 10.38 am to 11.00 am.

Evidence was then taken in camera but later resumed in public—

CHIPPINDALL, Mr Trevor, Director, Ethical and Governance Services, Department of Main Roads

CHAIR: I do apologise. We are running out of time. We may well get to a stage of having to truncate time slightly, but what we have asked of witnesses is to make an opening statement. Most submissions are fairly succinct, but we have asked for witnesses to make an opening statement and then to discuss any aspects of that statement and endeavour to give us the detail that we require. Would you like to make an opening statement? If you do not wish to, by all means we can deal directly with what you have in your submission.

Mr Chippindall: No, that is fine. Thank you very much. In short, I have been involved with the oversight body, the CMC, since about 1998 and I have had varying roles since that time. I have come from what I call a senior investigator right through now to a director, and in that time I have seen changes in the legislation et cetera. For the most part, my involvement with the CMC and its officers has been very positive and I have welcomed the changes, like the section 40 protocols et cetera. Helen Couper and my directorate have entered into negotiations about which section 40s we can do and proceed with inquiries quickly. So there have been some very positive things done.

Further, the CMC has published a number of documents that have assisted my directorate in respect of fraud control and many other things. So that is all positive. I do not have too many comments which are to the negative of the CMC currently, because the way in which I have been working with that agency has been very positive and we have always got satisfactory results, for them and for me. So, all in all, that is the way it is. My staff appreciate the guidance and assistance provided by the CMC staff because we can call at any time or email at any time and get that advice quite quickly and we are happy with that.

CHAIR: I was rather intrigued by part of your submission, in actual fact. Some of the submissions have been to try to cut down on work within the department or those reporting requirements to the CMC. You, in fact, are proposing a consideration of an expansion of CMC operations with coercive powers and to have them expanded to at least your department but I suppose by extension to all departments. Maybe it would not be to all departments—that is a bit unfair—but maybe to bigger departments or departments that may have need of them. How do you propose that that would advance your investigations and what level of investigations are you unable to presently carry out because your investigators do not have those powers or do not have the capacity to call on the CMC to assist with somebody who does have those powers?

Mr Chippindall: In short, the way that my directorate operates is that when I commenced there in 2004 I set up standing orders, because it appeared to me that I did not even really have a jurisdiction, whether it be at law or in some sort of instrument. I have an authority from a director-general which provides me authority or approval to conduct inquiries into misconduct and, on the CMC's behalf, official misconduct. That is one document that I rely on as part of my standing order. Having a law enforcement background before entering into this world of investigation, law enforcement agencies have statutory powers and they are usually about access, entry and seizure et cetera, et cetera, but we do not have those types of powers.

CHAIR: None at all.

Mr Chippindall: No. The Health Services Act—I have worked for Queensland Health, too—does have provision for the appointment of investigators by a director-general. There are certain powers that they are provided with when they are appointed as an investigator or an auditor. That is in the Health Services Act. So there is legislation which creates the position title for that, but the director-general of Queensland Health is extending the investigations into health issues to this type of investigation, too.

As I said, we have an authority from a director-general to conduct investigations and we have to conduct them in an appropriate manner. I have set up procedures and protocols for me and my staff, but should we need to do anything which is a little bit more—if the complexity of the matter requires certain searches to be conducted—we cannot do them so we have to then go and consult with the Queensland Police Service. My experience is that the Queensland Police Service—no disrespect to the service, because it has many more important matters to attend to—does not act upon our matters so they remain unresolved at their end. We bring the matter up with the Queensland Police Service, with the officer in charge at stations, and yet the type of matters we are referring over to them are not being acted upon.

CHAIR: When you say the type of matters that are not being undertaken by them, are they matters that do not come under section 15 of the CMA?

Mr Chippindall: They are usually matters involving drug cultivation, misuse and things of that nature in the workplace. That is what the allegation is. We do not have the type of power to run around with that type of matter.

CHAIR: That is official misconduct.

Mr Chippindall: It is.

CHAIR: You are required to report that to the CMC?

Mr Chippindall: We do.

CHAIR: In that case, why are you then charged with having to go to the QPS?

Mr Chippindall: We report the matter simultaneously. We attend, say, Petrie Police Station and talk to the officer in charge about the matter and say, 'This what we have got. Can you help us with this?'

CHAIR: And you have notified the CMC?

Mr Chippindall: Yes, correct.

CHAIR: As I said, I was intrigued by the nature of your submission, but the nature of the suggestion that you are now putting differs from the type of coercive powers that you are talking about.

Mr Chippindall: I think the CMC has sufficient coercive powers to satisfy my needs. There is no doubt about that. However, we probably would just like assistance from time to time by having one of their officers attend with us or come over to our office or for us to go to them and work through that type of matter. It is more about boosting up cooperation between the agencies rather than just getting a 'matters assessed' report saying, 'We require outcome advice.' We would find it beneficial to have one of the commission's officers assist on some of those types of investigation. I am not proposing that we want an act with coercive powers.

CHAIR: I did not take that from your submission. What you are saying now really is a different thrust to the submission that you made, isn't it?

Mr Chippindall: No, that was just an example.

CHAIR: You mention coercive powers, but if you have notified the CMC about official misconduct and you have section 40 to give you those guidelines then in terms of your ongoing dealings with the CMC—and I accept most departments try to work with the CMC to raise their standards of integrity and that is what the CMC and your own unit are charged with—surely in the current terms of the act there could be sufficient powers built into it to ensure that you are able to carry out any of those investigations.

Mr Chippindall: Yes. I will just go back to that example. I have no issue with that. We are just looking for more opportunity for the CMC to release staff to a particular investigation so that we work in conjunction with each other.

CHAIR: In terms of official misconduct you have that capacity now, do you not?

Mr Chippindall: Yes, but we do not carry with us the types of powers that the CMC possess, such as financial analysis and things like that. We have to liaise with them. There is no problem with that, we are just seeking more of it. When we have sought assistance it has been denied by the CMC because its resources are placed elsewhere.

CHAIR: The basic thrust of your submission is that they need extra resources to provide you with some assistance?

Mr Chippindall: That is possibly one way in which it could be rectified.

CHAIR: That was not a cynical comment.

Mr Chippindall: No, I am not being cynical.

CHAIR: No, from me. I am not suggesting it from you.

Mr WELLS: Perhaps he is also suggesting that underutilised resources exist in departments to do legwork which would be of assistance to the CMC; is that correct?

Mr Chippindall: Yes. We have officers also. This goes on within my submission—Alan Tesch's submission.

Mr WELLS: This needs to be corrected by statutory amendment or by regulation or by protocol? Which of these?

Mr Chippindall: I would have to look into that to have a firm answer for you. However, I think the act provides for these things in its building capacity in the Crime and Misconduct Act. It could be that administrative arrangements are made between Main Roads and the Crime and Misconduct Commission. But I would have to peruse the legislation before I had a firm answer for you there.

Mr WELLS: Obviously, if it can be done simply by a protocol it can be done very easily. We will check that one out.

Mr Chippindall: I also raise for your consideration the opportunity for secondments between the two agencies. I do not know if anybody else has raised that or not, but I would see value in that. Throughout my career I have always seen the CMC, the Ombudsman and the State Coroner, for example, as the oversight agencies that people aspire to. I have never worked there. I do not know the inner workings of the organisation and I may not need to know them, but I am sure that staff would gain benefit from short-term attachments or placements and vice versa. It would build capacity.

CHAIR: You think that could be achieved by those capacity-building training areas that the CMC already undertake?

Mr Chippindall: We attend those, yes, we do, but this is an adjunct to it.

CHAIR: You are virtually talking about a practical application of some of the theoretical things that they are doing in that training?

Mr Chippindall: Yes, precisely. Also, for example, we are probably sending over between four and five section 38s and maybe four or five section 40s a month—thereabouts. So we do not have big load for the CMC, like Health or Police have, but what we would see benefit in is that maybe myself or my staff would have opportunity to see what assessments are done and where matters are assessed so that we get a better understanding of how matters are assessed and the types of considerations which are used in making that final determination as to, 'No, this one goes back to Main Roads,' or, 'We're going to keep that one.' That would build our knowledge. Further to that, we would also probably enjoy—and it would genuinely make us a more positive and better informed unit—seeing how the CMC investigate matters. My staff have differing backgrounds and they have done their work in previous lives with different legislation. We would like to see how CMC investigators go about their work with the powers that are vested with them.

CHAIR: Perhaps that is something which can be done with protocols and training areas with the CMC. Thank you very much for your suggestion. Thank you very much for your attendance. We will take on board your submissions in terms of our deliberations.

Mr WELLS: Thank you for your attendance and for your diligence that caused your attendance.

CORK, Ms Julie, Private citizen

CHAIR: Good morning. It is a pleasure to see you again.

Ms Cork: You, too.

CHAIR: And welcome.

Ms Cork: Thank you.

CHAIR: I am sure I speak for the members of my committee in that regard, although they are quite capable of speaking for themselves. We are running into a time constraint but we felt that it was necessary to hear from you in relation to some of your concerns. We do not have a written submission. There was a previous document you provided to us and to the CMC of which we are aware. We have been saying to people that they can make an opening statement and then we will go into questions. We do not have anything to open with, but perhaps you could make an opening statement.

Ms Cork: The issues that I talked about in my farewell reflection from the CMC are the issues that are the basis of what I might be able to contribute. I am particularly interested in the governance area. I think we have talked at various stages about the kinds of issues that we have been concerned about. I have to preface my remarks by saying that my experience of the CMC is now 12 months old. I know that things have changed and a lot of what I suggest may well have been taken up.

My view is that the commission needs to focus a bit more closely on its objectives, particularly in relation to misconduct. If the objective of the CMC is to help UPAs to deal effectively and appropriately with misconduct by increasing their capacity to do so, I think that is the thing we ought to be focusing on—that is, the capacity development and prevention side. We need a much more integrated approach. The reflections of the gentleman from Main Roads indicate that to a small extent. It is very easy to become overburdened with complaints. When the complaints are walking in the door, you have to react to them and do something about them.

In order to get the biggest bang for your buck, you have to pull back and look at the overall strategy in relation to prevention and capacity development. I guess they are the two areas where I think we have tended not to have as big a response as would be productive, in my view. I think we have probably missed opportunities.

Our focus has often been, quite rightly, on official misconduct and our investigations look at whether or not official misconduct has occurred. If it has not occurred then that would be the response that we would give to the organisation or the individual. Often, though, the conditions exist in wherever that occurred for the official misconduct or the misconduct to have occurred in the first place. In the many years that I personally have investigated grievances in the public sector I have never investigated a grievance where there has not been another dysfunction in the workplace. I think we have missed opportunities to look at that prevention and capacity development because our response has been a bit single-minded. The response is: is there official misconduct or not? No, there is not, but what about all the other dysfunction that, if it continues, will inevitably lead to official misconduct. I would like to see a much rounder approach there.

I think we need to have a look at the skills of the staff at the CMC. In order to be able to identify those kinds of things you need to have a bit of experience at identifying them. Is that the right fit now? I know that that was an issue that was discussed when I was there.

I will make a brief comment on the devolution push. I would want to ensure that it is not resource driven but part of a carefully thought out overall change strategy. When the resources are so stretched it is pretty hard to work out what is what. I think the kinds of questions that I would be interested in asking if I were in the position where I wanted to see whether the sector was ready for devolution relate to the research evidence. What tells us that? How do we know that the culture of the public sector has changed? Certainly anecdotally there are some good stories, but there are a heck of a lot of bad stories as well. I think there is the possibility of using the research function a bit more to get in and support that kind of thing.

I think the kind of work that occurred when my colleagues and I were looking at corporate governance initially is well known to the committee. I think that is of absolutely critical importance. The idea that the corporate governance and accountability mechanisms need to be first-rate the more independence an organisation has from government is fundamental. Unless we get roles and accountabilities correct for the parliamentary committee, the commission itself and then the CMC—when I say ‘the commission itself’ I mean the board of management—then I think we run a risk of exposing the sector and the CMC staff to situations they would rather not be exposed to.

The governance issue has been plagued by a lack of clarity around who is responsible for what. I think it is terrific that the governance framework that we worked on has now been adopted but that is only the start of the journey. There are lots of things that now need to change in terms of reporting arrangements—and they may well have changed.

One other critical point is that the commission itself—the board of management—needs a secretariat that is independent of the CMC. At the moment, that secretariat support is provided out of the corporate services area. That places that corporate services area in what I think is an irreconcilable conflict of interest situation. It assumes that the interests of the CMC and the interests of the commission coincide. While they overlap greatly, there is a difference. The role of the CMC and the role of the commission are different.

An analogy would be if the research staff from the PCMC also provided the secretariat service to the commission. It is a different role because it is a different oversight body. As long as the secretariat service is provided out of corporate services then the commission itself cannot adequately function. The boss of the secretariat service is the executive director who answers to the chair. That means that the role of the commission cannot be fully explored, in my view. I think it is critical that that secretariat role be reinstated. As I understand it, when the old CJC was first created there was a separate secretariat role and that was prior to the change in the role of the commission. Over the years, that secretariat service became subsumed within corporate services. Post 1997 that role was very different. If there ever should have been a secretariat service it was post 1997. That has not occurred, as far as I know. I think that is a really important and critical issue.

The only other thought that I had was about the kinds of questions that it would be helpful for the PCMC to be posing to the commission. I think it would be helpful to the overall governance and accountability of the CMC if the PCMC was to pursue questions of a strategic nature. For instance, what are the preventative strategies that have been put in place? What capacity development has been occurring? How is the maturity of the sector being investigated? Who in the commission has been responsible for looking at the maturity of the sector? How is the commission achieving some kind of cultural change internally so that transparency and accountability are the most critical factors for staff internally? I think it might even be useful for the PCMC to meet with the commissioners, the CMC, from time to time.

CHAIR: The commissioners?

Ms Cork: The commissioners. Part of what happens is that we all get sucked into the attractiveness and seductiveness of cases. As long as we are talking about cases we are not talking about how this organisation is operating at a strategic level and how it is achieving its objectives. Because the staff of the commission have the expertise in relation to that—and we all love to hear about it—I think it would be helpful if there was a different focus.

CHAIR: You are aware of the strategic directions review that has been undertaken?

Ms Cork: Yes, I am aware that it has been undertaken.

CHAIR: It has been and is being undertaken—that is, 2009-2013. It may well have addressed and continue to address some of your concerns. I do not know the exact parts of that that would impact on your suggestions. I did not know whether you had based your considerations on knowing that that is being undertaken.

Ms Cork: I would like to hope that some of the work we undertook when I was there has ultimately led to this strategic review, but it is just the start of the journey. The power of the culture of an organisation is incredibly strong. It does not matter what the organisation is. In my time at the commission I observed a difficulty in changing direction and changing culture. I think that is an absolutely critical area of focus.

Mr WELLS: You raised the question about whether the public sector was ready for devolution. Can you say a little bit more about that, particularly with reference to your most recent remarks about the culture of any organisation?

Ms Cork: I do not work across the whole of the public sector, but I work across a good proportion of it. I think the sector is still far too risk averse. What is happening is that there is universally not a culture of transparency and accountability across the sector that makes me confident that it is time for devolution.

There are a couple of things here. I think we talk about devolution a bit incorrectly at times. A CEO of an organisation has a legislative responsibility to manage that organisation. That includes managing it so there is not misconduct, that the organisation achieves its outcomes and so on. The CMC, as I understand it, has a role in terms of official misconduct. The line between official misconduct and misconduct and all of that other stuff is sometimes quite blurred. The CEO does have responsibility across the whole range. I think it would be a helpful thing if we tended to talk about allowing the CEO to exercise his or her responsibilities in relation to this particular case rather than devolving it, because the CEO in fact has responsibility for doing something about it anyway.

So I think that is an issue where we have to get the wording right and we have to be careful how we talk about those kinds of things, because it makes an impact on agencies. I am not comforted by many agencies in which I think there is an understanding about transparency and accountability. I see many agencies that are risk averse and that are extremely good at trying to keep themselves and their minister out of trouble, which is not the same thing. I think it is very easy to misinterpret one from the other. I think our focus across the sector—and this is not the responsibility of the CMC alone, I might say—is not enough on openness and accountability and allowing risks to be taken and supporting people through them.

CHAIR: I think, in terms of my own detail that I am aware of, that there are still some of those agencies that are not only risk averse but where transparency is quite okay as long as you pull the blind down inside.

Ms Cork: Yes.

CHAIR: I realise that that is probably a culture that is very difficult to change, but as well as practising law I had a Public Service background prior to that.

Ms Cork: You know all about it, then.

CHAIR: I do have some awareness of that.

Ms Cork: In the prevention and capacity development role, there are a number of agencies that have responsibilities in that area. Until there is a strong bond between those agencies who all speak the same language, then it is not going to happen. With regard to cultural change, they say 'consistent, persistent, congruent'. There is not that message across the sector. The CMC is merely one agency in that, but I think we need to make more of an effort to bring all of that together. I am not particularly optimistic about the ability of the sector to be open and accountable.

CHAIR: I perhaps have some greater optimism, but maybe not a great deal more.

Mr WELLS: I have less.

CHAIR: That really is of assistance. One of the things that taxes us, as you are aware, is that we have to consider the operation of the CMC and how to make it better or to enhance it. I realise that there are some areas where there may not have been the success that even the people from the CMC and yourself, from your time as a commissioner, may have wanted. You may look at it and shake your head and say, 'We're not getting anywhere.' Hopefully the end result of this review and subsequent reviews can address those issues. I do think the culture is changing within some departments. I hate to single out a department, but I think the culture has changed greatly in the health department.

Ms Cork: I would agree with you.

CHAIR: It is one area where there has been a massive change. There are other departments where that is occurring. I would like to see—and certainly your comments in relation to the research functions and some of that—that rather than anecdotes there is factual detail that can be used if necessary 'to walk softly but carry a big stick'. It is a case of, 'You can do it or we will impose it.' It is very difficult in a lot of cases to achieve change by imposing. By walking together hopefully you could do that, but I think you still have to hide the big stick on the right-hand side if the person walks on your left.

Ms Cork: With regard to the idea of putting CMC officers out into agencies—that interchange—all of that has to happen. In terms of capacity development, we need to really ramp that up. Sure, money is an issue, but user-pays is the way to go. We ought to be doing that in a big way.

CHAIR: In actual fact that had been proposed to us as one option, particularly with some of the bigger organisations. If there were to be consideration for review or for some oversight of GOCs, it would be user-pays. If an organisation from the CEO down—or the director-general down or whoever the executive officer is—really has an intent to change its corporate practices, to change its departmental practices, then I think it has to factor into its own funding sufficient funding to make sure that its officers are properly trained.

Ms Cork: I agree.

CHAIR: Thank you very much. We can only benefit from advised knowledge. Once again, I would really like to thank you for your insights and suggestions.

Ms Cork: Thank you.

COUPER, Ms Helen, Director, Complaints Services, Crime and Misconduct Commission

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

NEEDHAM, Mr Robert, Chairperson, Crime and Misconduct Commission

CHAIR: Mr Needham, we did indicate to you that after we had taken the evidence we would provide you with the opportunity to reply. I do realise—and I must tell you—that we are running into a problem with time, but please go ahead if you would like to address any of those specific items. If you would prefer to do it by way of a supplementary submission then, by all means, feel free. If there are any matters that you wish to raise with us directly now that can be of assistance, please feel free.

Mr Needham: I understand that you might have already been given, through Mr Finnimore, a copy of a document this morning.

Mr FINN: Yes.

Mr Needham: If the committee could accept that as a part of our response. I do not know if you have had the opportunity, but it might be worthwhile if we use the time that you have available today to look at this, because I thought this was one of the more substantive issues that was raised. This has been prepared by Ms Couper to attempt to assist the committee with some of these issues that were raised in the QPS submission and in their verbal submissions yesterday, to set out the way in which this classification exercise is undertaken.

CHAIR: I think it may be also instructive in terms of a couple of the other submissions. They also seemed to—I am not sure whether it was housecleaning or what—have concerns about how that reporting is then dealt with when it gets to you but maybe not to the same degree of the QPS, which your submission relates to.

Mr Needham: That is why I think it might be best if I could ask Mr Lambrides and Ms Couper to join me.

CHAIR: By all means.

Mr Needham: Ms Couper in particular is the one who is the day-to-day real contact with these agencies and understands these sorts of issues. So I think we might be best to use her—

CHAIR: I had noticed her smile at some and shake her head at others. I appreciate that that really is—

Mr FINN: I think it is a really good idea to have a look at this, because this was a substantive thing out of yesterday. There were three clear things that the QPS were saying that I thought may even get some media attention, particularly given that journalists were in the room.

Mr Needham: But before we go into it, I just want to mention a couple of things. In terms of the issues about cooperative investigations and secondments, they are issues that are very much on our radar. They are issues that have been discussed in our strategic review and they are issues that we accept as being good issues—good programs to go ahead with. We have already got one investigator from the department of education and training who was seconded into the CMC to give him that extra insight of working in the CMC. We are realising that it can be advantageous when we do an investigation in an agency to in fact have one of their investigators work with our investigators on it. Apart from anything else it is capacity building for that person but it also helps our investigators because it gives them that insight into the knowledge of the way it works within the department which our investigators—

Mr FINN: So a recommendation in accordance with that Main Roads submission would be a very useful recommendation.

Mr Needham: We will be doing it, so perhaps if you can acknowledge the fact we are doing it and support it. In terms of the issue of secondments into our complaints service area, we accept that and we will be doing that—and some of our people are going into departments.

CHAIR: I may have been slightly remiss with one question about particularly Main Roads, but what numbers are we talking about in terms of Main Roads? Are you aware of the numbers in that—

Ms Couper: It is not significant.

CHAIR: We were dealing with 65,000 in Health and 85,000 in Education, and I did not ask Emergency Services, either. But in terms of the consideration—and in particular when Health mentioned about you and Health utilising the COMPASS system—when we had a submission this morning about inputting information I just wondered how far that sort of use can be made of information technology, because it deals with some of the concerns that may be within a department but it also gives a lot better oversight. You will recall from some of our bimonthly meetings that I and others have raised an oversight software program which saves you having to send this memo and get this memo back. So you can go into the system and say, 'Oh, that's here, that's here and that's here' within any of those.

Mr Needham: That is something we would be very interested in and it is something we have been looking at for a while. It is quite difficult to do it.

CHAIR: I appreciate that, and it is also quite costly.

Mr Needham: This is why we give COMPASS to them, because that is a big incentive to the organisation to go ahead with it. But we have got that to some degree with the QPS. We are doing the trial with Q-Health. We have one of our officers seconded into Q-Health to assist them with that. That officer has all of the knowledge of COMPASS and how it works and its functionality. If we could get that up and running with the bigger agencies—with the smaller agencies I do not know whether we would look at it—

CHAIR: They may not have the IT capacity to undertake that, anyway. Does it make it any harder with a small agency to do it by email and manually?

Ms Couper: Exactly. That is right. It would be the larger agencies certainly that would be the ones that would benefit the most and that we benefit from as well.

CHAIR: The large agencies with a possible need of greater oversight because of their size and the large agencies where you need to ensure that any capacity building within those organisations is in fact working.

Ms Couper: Absolutely.

Mr Lambrides: Can I just add something in relation to cooperative investigations. We are doing that far more regularly than previously, so we may only provide the coercive hearing power or the coercive power to get documents or send a police officer around to interview somebody who is not within that department. So we are doing that on a much more regular basis, and we do see the value of that.

CHAIR: I took that from Mr Chippindall's outline that there is cooperation. Certainly, it was obvious that from other submissions where nobody was called that the departments and the ministers feel that things are working very well. They may have some areas—I think we used the term yesterday morning—where there can even be disagreement amongst friends, but I think it is quite evident that a proportion of the work you are doing is filtering through very well. As I said to Ms Cork, I think there are still some people who have a little bit of difficulty with transparency and openness, and I am not sure whether they feel they need to cover their own back. I have an attitude that if you do not like the heat do not go into the kitchen. I think there are a big number and possibly the bigger agencies where your actions appear to be working and—

Mr FINN: I am concerned about the time, Mr Chairman, and I want the opportunity for the CMC representatives to speak to this document because I think that is what they were wanting to do.

CHAIR: Yes.

Mr FINN: Sorry, but—

CHAIR: No, you are right. I am aware of the time, too. It's my—

Mr FINN: It is your time that I am worried about. Did you want to make some comments about this?

Ms Couper: Yes. Have you had the opportunity to read it?

Mr FINN: We have, yes.

Ms Couper: It is not so much a storm in a teacup, but I think a lot of the concerns come from a slight misunderstanding of the assessment process and this notion of official misconduct being more serious than any other conduct. We obviously need to have more communication with the Police Service. Also, I think it comes from a culture from within. If the organisation itself has this belief and conveys that—maybe subtly or unintentionally—to their staff, 'This is an allegation of official misconduct and it is, therefore, very serious' as opposed to, 'This is an allegation of police misconduct. It is not so serious. Don't be so concerned,' we have to work with them from that point of view and try to change that cultural perspective.

Certainly, I think the most important thing is—how we classify the allegation—is merely a jurisdictional thing, as I think Assistant Commissioner Martin noted. How it is dealt with is an entirely different thing. The jurisdictional issue in terms of the reporting requirements and our monitoring is one thing. Once that is determined, beyond that how it is dealt with is an entirely separate thing and, as we mentioned here, you can deal with official misconduct by way of managerial resolution, or you can deal with police misconduct by way of a full investigation. It is about dealing with the conduct and what might actually be conduct. It might not be any conduct at all, and we appreciate that there is a world of difference potentially between the allegation and what has actually happened.

I think we just need to reinforce that more with the Police Service and as part of Verity and I think in the marketing and education and training not only will we be directing that towards those officers who will be involved in dealing with these things but also the rank and file so they understand and try to, hopefully, appreciate that the mere fact of an allegation does not necessarily mean an adverse consequence for them at the end of the day and managing through that.

Mr Lambrides: If I could just add, it is obviously a very difficult concept, because on a number of occasions Ms Couper and I have addressed the senior police echelon about this very issue—about this very same question—and seemingly the message is just not getting through. But we are not going to give up. Clearly, there is still an issue there and we have to pursue it. It is as simple as that. It is not as if we have not tried and tried and tried.

Mr Needham: I suspect there is a bit of an understandable approach on the part of the QPS and I saw, I think, a little bit of it this morning from Emergency Services. We do not worry about counting how many—we end up at the end of the day doing that—but we are not doing it thinking what the numbers are going to be at the end of the day. We just take the complaints as they come in and, on the basis of what is in the complaint, assess ‘What does this allegation allege?’

Departments are probably concerned at the end of the day about the number of allegations that are reported as being made against them. I think there is an understandable desire at times, or a wish, that things could be counted down a little bit more than up a little bit.

CHAIR: ‘Let’s limit the quantity.’

Mr Needham: I am not wanting to overstate that.

CHAIR: No.

Mr Needham: There is a little bit of an element of that sometimes there.

Ms Couper: One of the messages we have been trying to convey is that the number of allegations may be a good thing. It shows preparedness to be open and transparent and accountable. We are starting to get some acceptance of that notion at some level.

Mr Lambrides: And also what we want to make quite clear is that because the threshold to report is so low, we expect that a vast majority of these will not be substantiated. That is all about transparency and accountability. So they should not fear the number because the numbers themselves, in most cases, are meaningless.

Ms Couper: It may be a good insight into at least the perceptions that the staff have and their clients have and an opportunity to actually improve communications. So learning tools are positive for them. That is the message that we have been trying to convey.

Mr Needham: But a lot of those things that were spoken about like this morning from Emergency Services, all of those smaller matters they are talking about would be reported to us under a section 40 direction—the schedule. So they can start into it straightaway. There is not an overlay by having to report to us. Those are generally the sort of things that it is best that they do get in and deal with immediately. They are generally the managerial type of issues.

Ms Couper: We are looking to extend the section 40 directions. We have spoken to a number of departments about, ‘Let’s look at some specific examples or the types of conduct that you see in your department, develop some specific allegation types and subtypes around those and include those in section 40.’ We are very keen to make sure that we pick that up, particularly if you see a category of matters always going back for outcome advice only. That is an indication possibly that we need to add that to the section 40 direction.

If it is because our current allegation types do not allow for a variation within that allegation and so therefore it is captured by the section 38 referral, let us be a bit more detailed about the subtypes so we can eliminate those from section 38 and put them in section 40. We are more than prepared to do that and have started that exercise. This will help.

Mr Lambrides: That ambulance situation—the one that was described this morning—is something that could clearly be put in as part of a specific section 40 direction so they would not have to report to us before they acted on it. Whether or not you think that is official misconduct, it would not make any difference because they would be allowed to act on it straightaway anyway and we would only want outcome advice.

CHAIR: To me, that is very much an operational discipline matter rather than necessarily official misconduct. I would have to have a look at the transcript and see what you can make of it as a basis for saying, ‘Look, we have to report too many of these things.’

Ms Couper: We had a recent forum with the liaison officers about another aspect of our definition of breach of trust, which causes a lot of difficulty. We came down to an approach, ‘There is always room for disagreement. Let us take a pragmatic approach to this. Let us say that as long as it is arguable, we will accept that. We will put in place some protocols and we will get on to dealing with that as quickly as possible.’ That is the sort of thing that I think we can do with this section 15(b) as well.

CHAIR: As indicated earlier in my opening remarks—pardon me, Mr Wells—

Mr WELLS: There was a philosopher called John Wisdom who said, ‘It does not matter what you say as long as you also say the opposite.’ I invite you to make a Copernican shift. You said the number of allegations might not be a problem. You also said the mere fact of an allegation does not mean that the person has a problem. But let us also say the opposite: the number of allegations is a problem, because it means workload and, from the testimony that we have had today, a lot of it gratuitous workload, for a large number of people and, from the testimony that we have had today and yesterday, a great deal of grief for a significant number of people who are the subject of the allegation. So the number of allegations is a problem. The mere fact of an allegation does not mean that the person has a problem. What does mean a problem for a member of parliament, for example, is that a mere allegation damages his or her chief stock-

in-trade, which is his or her reputation. For a police officer, a mere allegation means your career is on hold and the same for large numbers of people in the public sector. So the mere fact of an allegation does mean that the person has a problem. What you said is also true—and I know you want to come back to me, but you are only in paragraph 1 of a three-paragraph exposition—from the point of view of the system.

The fact that allegations are being made, that complaints are being made, but they are being dealt with, is a healthy sign. However, it does have a very significant downside. Today we got testimony from a department that said 90 per cent of the things that they send to you come back to them and, of those, a large number of them were vexatious and trivial in the first place. Apart from that, a large number of them were of no consequence, but they just sent them off because they felt that it would be a fair thing to do, the safest thing to do. They did it without consulting the party against whom the allegation was made. So a lot of the evidence on which your agency could just tick and say, 'No issue' was not before the commission at the time that it commenced its nice circulatory flow from the Department of Emergency Services to you and then back to the Department of Emergency Services, after which time the person concerned had suffered a considerable amount of grief because there is a culture throughout the Public Service, going from the ministers down to the lowest paid admin officer, that you are a spy agency rather than a law enforcement agency. Therefore, it has to be some big secret that somebody is being investigated and they must not be told.

I reckon you could save yourself an awful lot of work simply by putting a notice around the entirety of the government, from the ministry down to the most junior recruit in the Public Service, to say, 'After you have referred somebody to the CMC it would be a really good idea to tell them, or cause them to know, so that they can produce evidence of their innocence if that is the case.' You would save yourself an awful amount of time.

The Copernican shift that you need to make—I know you are sitting on the edge of your seat—

Mr Lambrides: We all are.

Mr WELLS: The Copernican shift that I invite you to make is to understand that, with the possible exception of some of the people in this room, the whole of the government—from top to bottom—is scared witless of your organisation. If you gave them more structure, if you gave them more delineation as to how they should handle themselves in circumstances where they were the subject of complaints, you would make life a whole lot easier not only for them but also for yourselves.

Ms Couper: If I can say, we have actually started well down that path. Certainly, the fear factor—through all the many and varied meetings, workshops and information sessions I give to various levels of the organisations, we talk about the fear factor. We have on draft now a brochure designed to be given to all staff to try to remove the fear factor and to try to work with the agencies to change that culture, that does not look upon the fact of a complaint being made as 'You are guilty until proven innocent and you are tarred with a brush.' It is part of being a transparent and accountable organisation. I know that is easier said than done, but we are trying to work together with management to change that focus.

That is something that we are doing already as part of our training and information session. As I say, we are intending to produce brochures to be co-badged with agencies themselves to look to convey that information to staff, be it at an induction or as part of management working with their staff on a regular basis: before it happens to them, to let them know what it is all about. Explain 'I, as a manager, will treat you the way I have always treated you unless and until there is some basis not to treat that you way'—that might be a duty of care issue but you explain to staff what it is about—'but our culture is not to tar you with a brush merely because of an allegation', and there is a whole lot around that.

In terms of the difficulty where there is an allegation against a staff member and they do not know about it until allegedly months down the track, certainly we say to agencies, 'Do not tell the person who is complained about before the complaint comes to us.' There are lots of obvious reasons for that, but what we do say is, 'As soon as it is with you to deal with, the very first thing you probably should do is look at "What I am actually dealing with here?" Once you have an understanding of that, the very first person you speak to is the person who is the subject officer, because they are obviously the person with the answer.'

We also in our training for Facing the Facts suggest that the traditional investigative approach of leaving the subject officer until last is not always the best and, again, encouraging them, on those occasions when the subject officer has the answer, to come forward. I give the example of the agency that investigated a complaint where, in fact, the union representative said to the subject officer, 'Hold back, hold back. Don't go yet. Wait until they come and see you.' Eighteen months down the track they did and if only they had spoken to that person first off there would never have been an investigation. So we are very much working with them trying to give them that structure, trying to give them that confidence to deal with them in that way to minimise the fear factor. We have a long way to go. It is going to be difficult, but there is no reason not to start and we have.

Mr Needham: Can I add to that that the matters you were talking about—you prefaced your question on the basis that they were mainly the trivial matters, the ones where there is really nothing much in it—those small things. Those small things come to us by way of schedule under our section 40 direction. We only get it by way of schedule, which will have a precis and everything of what the complaint is. But the fact of the matter is that the department can start to deal with that immediately. The day they get it, they put it in the schedule to go to us at the end of the month, but they have started into that investigation, or can

start into that investigation that day. So it is not going to have to take time to wait until it comes back from us before they can start to deal with it. In these small matters, then it goes on to what Helen was saying, those sorts of matters are the ones where very often the first person to talk to can be, in the appropriate cases, the subject officer. For the matters that come to us not by way of schedule but the more serious matters, I would be very averse to having a suggestion out there that they go and talk to the subject officer before sending it to us.

Mr WELLS: Not before sending it.

Mr Needham: Even send it and then talk to them before hearing from us, because it is in some of those more serious matters that the last thing we want them to do is go and tell the subject officer before we can consider what has to be done about it. In lots of the cases these days, the most important pieces of information are the emails and all those sorts of things that are there—the pieces of paper. You do not want to tip the person off and give them the opportunity to get rid of all this evidence before you have the opportunity to get in and start doing your investigation. You want to get all that material secured. Then we make the decision, if we are looking at it, as to whether we do that. In some cases it is appropriate to talk to the subject officer earlier in the piece. In other cases you want to do some preliminary investigations before you talk to them. That is done on a case-by-case basis. We certainly agree that in the smaller matters it is very often appropriate that the subject officer should be apprised up-front and given the opportunity to present their version of it at that time.

Mr Lambrides: Normally any covert work depends upon the subject officer not knowing that we have any interest in the matter. In relation to the more serious matters, if you tip them off there would be virtually no covert work.

Mr WELLS: I understand that. The question is: how do you delineate it so that you are not wasting time? For example, there was a case where some idiotic allegation was made against a minister who had in fact merely implemented the publicly stated mandate of the government but a six-month investigation was undertaken and the minister was not told until the end of that six-month period. It was a waste of significant resources in that particular case. How do you delineate the two things? If you could somehow communicate to people when they are supposed to tell and when they are not, the minister could have in that particular case produced the documentation just like that, I understand.

Mr Lambrides: It really is a case-by-case basis. That is the problem with these things. You cannot set guidelines for this because every case will be different. There may well be a small difference in fact which makes a big difference to the way you approach the matter. That is why guidelines on these things are very difficult other than to say, 'Please consider it, and if you think that telling the subject officer will not in any way compromise your inquiries or your investigation then tell them.' In the same way as you try to keep the complainants informed about the progress of the investigation, I would expect my officers to tell the subject officers about the progress of the investigation. That goes back to one of the matters raised by the commissioned officers' union yesterday.

Mr WELLS: I have one more point. I take it on board that that is incredibly complex. Helen, with respect to the fear factor, I never said that you should try to diminish the fear factor.

Ms Couper: 'Stickus maximus'.

Mr WELLS: We set up the CJC knowing that it was going to instil fear into everybody. Basically, you are a clinic that is capable of giving a bill of good health to the public sector. That is one of the most important things that the CMC does. It provides to the people of Queensland the closest thing that they can get to a guarantee of good governance. The fear factor is endemic in that. There is no point in ever trying to make them love you; they will always fear you.

Ms Couper: It is about having fear in the appropriate cases—not fear to the extent which undermines them doing their job but certainly fear that if they have done the wrong thing: whack. It is about those very many people who find themselves, including managers, unable to deal with the day-to-day work and getting on with the situation because they are unnecessarily fearful about a process, but certainly reminding them that, yes, there is a big stick there and if they have done the wrong thing there will be a consequence. So it is about balancing that.

Mr FINN: I have two statements and a question, but my statements are not eloquent, Hon. Wells, nor are they full of Latin. My first statement is that we are three for 60 at lunch, so we have not missed much. My second statement is—

Mr Lambrides: Is another statement necessary after that one?

Mr FINN: Quite seriously, Friday week is our last opportunity for the year to explore things and in preparation of our review as well. A few things came up today that we need to give some thought to in working out how we go with them: how we support people and families under investigation without compromising the investigations; addressing terminology—concluding investigations with 'insufficient evidence' has been an issue that this committee has talked about, whether it is a suitable way of concluding an investigation by just saying to someone, you know the phrase—

Mr Lambrides: A 20-year issue, literally.

...

Committee adjourned at 12.56 pm