

**Government Response to the
8th Parliamentary Crime and Misconduct Committee
Report No. 86, May 2012**

Three Yearly Review of the Crime and Misconduct Commission

Preface

In Queensland, the Crime and Misconduct Commission (CMC), through its function to investigate and combat major crime, has an integral role in the criminal justice system. The CMC has wide coercive powers and is able to provide other law enforcement agencies with invaluable information and assistance to bring to justice serious and dangerous criminals.

The CMC also has the role of preventing and reducing public sector misconduct. Through its investigation powers or by assisting or monitoring how public sector agencies deal with and prevent misconduct, the CMC is responsible for raising the standards of integrity and conduct in the public sector, including the police.

Given the CMC's important role and functions, the Parliamentary Crime and Misconduct Commission (PCMC) is to undertake a review and report on the activities of the CMC each parliamentary term. It is through this process that the CMC is accountable to Parliament and the people of Queensland.

The May 2012 PCMC Report No. 86 on the Three Yearly Review of the CMC (PCMC Report), involved a comprehensive review on the CMC's current activities and operations. However, the Government remains concerned the CMC has been called upon to investigate certain complaints that are lodged for political purposes, and as such has become part of the political debate. This acts as a distraction to the CMC undertaking its important crime fighting and misconduct functions.

On 11 October 2012, the Government announced the appointment of an advisory panel, comprising former High Court Judge the Honourable Ian Callinan AC and University of Queensland Professor Nicholas Aroney, to review the *Crime and Misconduct Act 2001* and report on any legislative amendments to ensure *inter alia*: the operations of the CMC and associated agencies are not inappropriately used or abused; and that relevant agencies focus on their primary functions. The advisory panel is required to deliver its report to the Attorney-General and Minister for Justice by 14 March 2013. The advisory panel's terms of reference can be obtained at the following link:

<http://www.justice.qld.gov.au/cmcreview>

Without pre-empting their focus or the recommendations, the advisory panel may address some of the issues raised in the PCMC Report. Therefore, the Government's response as outlined in this document may be later influenced by the final recommendations of the advisory panel, when it is delivered in March 2013.

GOVERNMENT RESPONSE

The headings in this response relate to the chapters of Report No. 86 in which the particular recommendations are found.

Overview of the Functions and Structure of the Crime and Misconduct Commission

Recommendation 1

The Committee recommends that the Government consider amending section 230 of the *Crime and Misconduct Act 2001* – Appointment of part-time Commissioners, to ensure that when appointing new part-time Commissioners, consideration is given to the skills and experience held by standing commissioners to maintain a broad range of experience and qualifications mentioned in section 225(b) between commissioners.

Response to recommendation 1 – Supported

The Government agrees such an amendment will ensure future recruitment and appointment processes have regard to the skills and experience of current commissioners in order to maintain a broad cross-section of qualifications and expertise across the part-time commissioners to the Crime and Misconduct Commission (CMC).

Recommendation 2

The Committee recommends the Government retain sections 247(1), (2) & (3) of the *Crime and Misconduct Act 2001* in their present form to limit the duration of employment of senior officers and assistant commissioners to a maximum of 10 years (subject to section 247(3A)).

Recommendation 3

The Committee recommends the Government amend section 247(3A) of the *Crime and Misconduct Act 2001* to allow a reappointment of a senior officer (for a period of five years) and exceed the ten year limit, if the senior officer:

- a) has been successful in being appointed to an Assistant Commissioner position or an alternative senior officer position within the CMC; and
- b) the duration of the appointment would otherwise be limited to a period of less than five years due to the operation of section 247(3).

Response to recommendation 2 and 3 – Supported

The Government acknowledges the achievements of CMC in implementing effective recruitment and succession management strategies that will continue progress towards the CMC becoming a workplace of choice. The Government agrees that an amendment to allow an extension of the term of a senior officer over ten years in the stated circumstances will help achieve an appropriate balance between the need for renewal of staff with the need to attract, engage and retain experienced staff to maintain stability within the organisation.

Recommendation 4

The Committee recommends that the CMC retains its current structure and considers that there is no benefit gained in separating its crime area and misconduct areas into separate organisations.

Response to recommendation 4 – Under consideration

It has been over ten years since the amalgamation of the Queensland Crime Commission and the Criminal Justice Commission to form the CMC. Since that time, criminal activity is becoming increasingly difficult to combat using traditional methods of investigation. The CMC and other law enforcement agencies are required to continually improve their use of advanced technologies, identify vulnerabilities and develop new and innovative law enforcement responses.

In this context, and subject to any recommendations delivered by the advisory panel that is currently reviewing the *Crime and Misconduct Act 2001*, the Government will consider the CMC's current structures and whether the CMC's resources are being used in the most effective manner to combat major crime.

Combating Major Crime**Recommendation 5**

The Committee recommends that the Government consider the allocation of additional resources to the CMC's forensic computing unit in order to better support investigations of paedophilia and child exploitation material.

Response to recommendation 5 – Not supported

The CMC's forensic computing unit has an integral role in investigations into paedophilia and child exploitation material.

The CMC receives approximately \$50M per annum to undertake its crime and misconduct functions. In the current fiscal environment, the Government expects, as it does with other public sector agencies, the CMC to use its existing resources in the most efficient and effective manner to carry out its primary functions.

The CMC, like other budget-funded agencies, will continue to have the opportunity to make submissions through the Attorney-General and Minister for Justice to the Cabinet Budget Review Committee to seek approval for additional resources. Those requests will be considered as part of the usual budget processes.

Recommendation 6

The Committee recommends that the Government consider removing the requirement in the *Criminal Proceeds Confiscation Act 2001* that the Attorney-General be briefed before proceedings in relation to money laundering can be commenced.

Response to recommendation 6 – Under consideration

Queensland, like many other common law jurisdictions, retains some offences that require the consent of the Attorney-General to prosecute. The justification for this type of provision mostly centres on the necessity for ensuring consistency in prosecution for special types of offences. Given these matters, this recommendation requires further consideration.

Recommendation 7

The Committee recommends that as a priority the Government allocate greater resources to the CMC's proceeds of crime function in order to assist the CMC in retaining existing staff and attracting new staff while also meeting the demand for new civil confiscation actions.

Response to recommendation 7 – Not supported

In the current fiscal environment, any requirement for a greater allocation of resources will need to be funded from within existing agency resources; including possible reallocation of resources.

The CMC, like other budget-funded agencies, will continue to have the opportunity to make submissions through the Attorney-General and Minister for Justice to the Cabinet Budget Review Committee to seek approval for additional resources. Those requests will be considered as part of the usual budget processes.

The Misconduct Function**Recommendation 8**

The Committee recommends that its successor committee monitors the changes to the misconduct area of operations to evaluate the ongoing effectiveness of the CMC's internal restructure embedding prevention officers within investigation teams.

Response to recommendation 8 – Noted (Matter for the Parliamentary Crime and Misconduct Committee)

The Government considers it is important to any organisation that there be a program of continual review of its internal structure, operations and procedures to maximise the use of its finite resources. The success of the recent restructure by the CMC as noted in this recommendation is an example of why this continual renewal process is an important activity.

The Government notes it is a matter for future Parliamentary Crime and Misconduct Committees (PCMCs) to monitor the ongoing effectiveness of this restructure.

Recommendation 9

The Committee recommends that both the Government and the CMC take a more active approach in promoting the process of devolution in any communication strategies relating to Government departments complaints or disciplinary processes in order to assist participants involved in misconduct complaints processes to become aware of, and understand how, their complaints will be managed.

Response to recommendation 9 – Supported

It is important as part of any complaints process that the relevant organisations and persons involved fully understand the process and how the complaint will be progressed and dealt with. The devolution principle, which is one of four principles the CMC uses to determine whether a complaint about misconduct is dealt with in an appropriate manner, is one of the least understood, and is also subject to the other three principles (the cooperation, public interest and capacity building principles).

The devolution principle provides that subject to the other three principles i.e. –

- (i) co-operation with the CMC;
- (ii) that the unit of public administration (UPA) has capacity to prevent and deal with misconduct effectively and appropriately; and
- (iii) the nature and seriousness of the misconduct and whether it is prevalent or systemic within the UPA or is not so serious that the public would expect the CMC to deal with the matter in order to maintain public confidence;

a UPA should generally take action to prevent and deal with misconduct itself.

Given the complex nature of the devolution principle the Government supports the CMC working collaboratively with individual Government departments to promote and explain devolution in any communication strategy relating to a department's complaints or disciplinary processes.

Recommendation 10

The Committee recommends that the CMC continue to work with the Department of Communities and the Commissioner for Children and Young People and Child Guardian to closely monitor complaints received by young people in detention centres to identify whether there are any trends in complaints received or systemic issues that require further attention.

Recommendation 11

The Committee recommends that the CMC consider commencing an awareness program with Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service, about the role and functions of the CMC, to assist with young people in detention centres understand complaints processes and their rights within those processes.

Response to recommendations 10 and 11 – Supported (Matter for the Crime and Misconduct Commission)

The Government notes that following the recent State election the Department of Justice and Attorney-General now has administrative responsibility for youth detention centres.

While the Department of Justice and Attorney-General, as a unit of public administration (UPA), has responsibility to prevent and deal with complaints about misconduct, the CMC has the overriding responsibility to ensure that such complaints are dealt with effectively and appropriately. Whether this involves the CMC dealing with the complaint itself or devolving the complaint to the Department of Justice and Attorney-General, is a matter for the CMC.

The Commission for Children and Young People and Child Guardian (the CCYPCG) also has an oversight role in relation to the youth justice system including monitoring complaints by young people in detention centres. This role was established following *The Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions 1999* (the Forde Inquiry). The Commission has responsibility to identify any trends in complaints or systemic issues requiring further attention about youth detention centres.

The Government acknowledges that young people in detention centres are less likely to fully understand the complaints process or their rights in making a complaint. In addition to detention centre admission procedures that explain complaint processes, the CCYPCG delivers an independent community visitor and complaint process which helps to mitigate against this risk. While Recommendation 11 may further address this issue, it is a matter for the CMC to establish a working relationship with Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service to increase the awareness of young people in detention centres about their rights regarding complaint mechanisms.

Recommendation 12

The Committee recommends the CMC continue its focus on closely monitoring the performance of devolved agencies when dealing with and preventing misconduct, including taking a more active involvement, if required, in matters that have been referred back to agencies to deal with.

Recommendation 13

The Committee recommends the CMC review its complaint handling processes (including its processes for monitoring devolved complaints) and associated publications to ensure –

- (a) there is clear guidance on the assessment and categorisation of matters;
- (b) the assessment and categorisation of matters is communicated clearly to devolved agencies;
- (c) the requirements of a devolved agency, in dealing with matters, are able to be clearly understood; and
- (d) the level of monitoring by the CMC of devolved matters is clearly understood by all parties.

Response to recommendations 12 and 13 – Supported (Matter for the Crime and Misconduct Commission)

The complaints, discipline and misconduct system in any unit of public administration (UPA) is only as effective as the capacity and ability of the CMC and UPA to take

appropriate action to prevent and deal with complaints about misconduct. The CMC and UPAs need to continue to work collaboratively to improve the ability of each UPA to fully understand their obligations and responsibilities in the prevention of and dealing with misconduct complaints.

Recommendation 14

The Committee recommends that the Department of the Premier and Cabinet, as the lead public sector agency in Queensland, take an active role in ensuring all public sector agencies –

- (a) have adequate resourcing to deal with and prevent misconduct within their agency; and
- (b) have appropriate representation on the Queensland Public Sector Ethics Network to actively participate in ethics and integrity strategies that are implemented by integrity agencies.

Response to recommendation 14 – Supported

The Public Service Commission (PSC) is the lead public sector agency for integrity and accountability across the Queensland public sector. The PSC facilitates the Queensland Public Sector Ethics Network, (QPSEN), which meets once a month to provide a consultative forum to effectively identify ethics issues and develop strategies which promote the government's integrity agenda across the public sector.

Each public service agency is required to establish an ethics officer to represent their agency at the QPSEN meetings and to promote the QPSEN's role within the agency. Public sector agencies should ensure they have appropriate representation on the QPSEN and that their respective ethics units are appropriately resourced from existing budgets to deal with and prevent misconduct within their agency.

Recommendation 15

The Committee recommends the Attorney-General review the current methods under which reports are provided by the CMC under section 260 of the *Crime and Misconduct Act 2001*, to enable him to fulfil his own responsibilities under that Act in ensuring the CMC operates to best practice standards, in areas such as timeliness.

Recommendation 16

The Committee recommends after reviewing the methods under which the CMC reports that the Attorney-General takes appropriate steps, as and when required, to ensure the CMC is provided with the necessary resources to carry out its investigative functions.

Response to recommendations 15 and 16 – Supported in part

Under section 260 of the CMA, the Attorney-General and Minister for Justice has responsibility to ensure the CMC operates to best practice standards. To fulfil this responsibility, the Attorney-General may direct the CMC to provide him with information. The Attorney-General can determine when and how this information is provided.

It is timely for the Attorney-General to review the content of the information provided by the CMC and how often this is provided. The Government supports the Attorney-General reviewing the current methods under which section 260 reports are provided to him, to ensure that he is able to carry out his responsibilities under section 260 and that the CMC

is operating to best practice standards, particularly in relation to timeliness of investigations.

However, the Government expects the CMC, like other public sector agencies, to carry out its functions within its existing resources.

The CMC, like other budget-funded agencies, will continue to have the opportunity to make submissions through the Attorney-General and Minister for Justice to the Cabinet Budget Review Committee to seek approval for additional resources. Those requests will be considered as part of the usual budget processes.

Recommendation 17

The Committee recommends that the CMC review its benchmark timeframes for conducting both misconduct investigations and reviews of matters, against the benchmarks being implemented under the new Police Complaints, Discipline and Misconduct System to try and achieve consistency across its operations and report to the Attorney-General on this matter under its section 260 report.

Recommendation 18

The Committee recommends that the CMC review its communication processes with agencies, complainants and persons under investigation and puts in place a process whereby the CMC provides stakeholders with an estimated timeframe for its investigations at the outset and regular updates throughout the conduct of the investigation.

Response to recommendations 17 and 18 – Supported (Matter for the Crime and Misconduct Commission)

The Government agrees that the timeliness of misconduct investigations may be better managed with established benchmarked timeframes and regular updates to agencies, complainants and persons under investigation about the investigation process, its current status and the proposed forward progress of the investigation. Lack of information about a process and what is happening is one of the most likely causes for complaint and can be easily avoided with a clear communication strategy including information about the benchmarked timeframes.

It is a matter for the CMC to consider a review of its current benchmark timeframes and to develop a communication strategy to ensure all relevant parties involved in an investigation are provided with the necessary information to keep them informed on the progress of the investigation.

Recommendation 19

The Committee recommends that the CMC continue its assessment of agencies' ability to understand and deal with official misconduct and provide section 40 directions, as appropriate, to assist with timeliness in the complaints handling processes.

Response to recommendations 19 – Supported (Matter for the Crime and Misconduct Commission)

The Government agrees that a direction to a unit of public administration (UPA) under section 40 of the CMA, is an important strategy to assist in reducing timeframes for

managing complaints. A section 40 direction allows the CMC to modify the statutory obligations of a public official to report complaints of misconduct to it, and allows the CMC to pre-assess certain categories of complaints so that UPAs may start dealing with complaints (in those nominated categories) immediately and report back to the CMC on a monthly (or other designated) basis.

The Government supports the CMC continuing to work with UPAs to assess and identify what types of complaints may be the subject of a section 40 direction.

Recommendation 20

The Committee recommends that the Government gives a high priority to advancing the legislative amendments required to support the enhancements to the Police Complaints, Discipline and Misconduct System and should aim to introduce the amendments into Parliament for passage by the end of 2012. This includes recommendations from both *Setting the Standard* and *Simple, Effective, Transparent, Strong*.

Recommendation 21

The Committee recommends that future Committees closely monitor the operations of the CMC under the new Police Complaints, Discipline and Misconduct System in order to identify any implementation problems and make recommendations to the Government for any changes as required.

Recommendation 22

The Committee recommends the Attorney-General and Minister for Justice, as responsible Minister ensures the CMC has adequate resources to operate effectively under the new Police Complaints, Discipline and Misconduct System, as envisaged by the Independent Panel's report.

Response to recommendations 20, 21 and 22 – Under consideration

In August 2011, the former Government released a response to the Independent Expert Panel's report, *Simple Effective Transparent Strong – a review of the police complaints, discipline and misconduct system* (SETS report).

The Newman Government acknowledges that it is important there be a strong police complaints, discipline and misconduct system that maintains public confidence in the system's integrity and impartiality.

Any response by the Newman Government to the SETS report recommendations will take into account important issues such the newly announced policies relating to the Queensland Police Service (such as the increase in frontline police officer numbers), the findings of the interim report of the Commission of Audit in relation to the State's finances, and any recommendations delivered by the advisory panel that is currently reviewing the Crime and Misconduct Act 2001 which may impact on the SETS report recommendations.

Recommendation 23

The Committee recommends that the Government support the CMC in resolving any inter-jurisdictional issues in the application of the jurisdiction of the CMC to GOCs as quickly as possible, including making amendments to the relevant legislation, in order to provide certainty to the processes and procedures being implemented by both the CMC and the GOCs to comply with the new arrangements.

Response to recommendations 23 – Supported

The Government supports Government Owned Corporations (GOCs) being subject to the CMC's misconduct jurisdiction. Any cross-jurisdictional issues arising from the GOCs being also subject to the Commonwealth *Corporations Act 2001* should be resolved as soon as possible.

The CMC should work in co-operation with the GOCs and other public sector stakeholders to resolve the legal issues. If legislative amendments are required, the CMC should report on these matters to the Attorney-General and Minister for Justice, as the responsible Minister for the *Crime and Misconduct Act 2001*.

Recommendation 24

The Committee recommends that successor committees closely monitor the CMC's supervision of GOCs over the next reporting period to assess the effectiveness of the new arrangements.

Response to recommendation 24 – Noted (Matter for successor Parliamentary Crime and Misconduct Committees)

It is a matter for future Parliamentary Crime and Misconduct Committees to report on the appropriateness and effectiveness of the new arrangements put in place regarding the CMC's supervision of GOCs.

Recommendation 25

The Committee recommends that the CMC review its current media policies, including its *Communication* policy and its policy on *Releasing Information to the Media* in order to establish whether any amendments are required to enhance the public confidence in the conduct of its operations.

Recommendation 26

The Committee recommends that the CMC consider developing a specific, publicly available policy on dealing with matters referred to it about serving public officers or candidates for public office during an election campaign.

Response to recommendations 25 and 26 – Supported (Matter for the Crime and Misconduct Commission)

The Government is concerned that the CMC may be used to gain political advantage, particularly during election campaigns, as was the case during the most recent general election. This is an abuse of the CMC's role and an unnecessary waste of the CMC's time and resources. The current review being undertaken by the advisory panel will, as part of its terms of reference, address the concerns raised by the PCMC and report to the Attorney-General and Minister for Justice on recommendations to resolve these issues.

The Government encourages the CMC as a matter of priority, to review its current media policies relevant to publication of information during an election campaign and to also develop a specific policy on how the CMC is to deal with matters referred to it about serving public officers or candidates for public office during an election campaign.

Recommendation 27

The Committee recommends that no amendment is required to the *Crime and Misconduct Act 2001* in relation to the publication of CMC reports.

Response to recommendation 27 – Supported

The ability of the CMC to prepare a report for publication on its misconduct functions is a useful strategy to highlight systemic issues within a unit of public administration to the government and the public; and to maintain public confidence in the integrity of the CMC's complaints and investigation processes.

The Government is of the view that the CMC should carefully consider the information to be included in a report particularly where the information may lead to the identification of an individual and it is intended the report will be published.

The Government agrees that no amendment is required to the *Crime and Misconduct Act 2001* in relation to the publication of CMC reports under section 69 of the CMA.

Recommendation 28:

The Committee recommends that in developing the legislative changes required for implementation of the new Police Complaints, Discipline and Misconduct System, the Government reviews all relevant time periods to ensure there is consistency across legislation and the time periods provided are reasonable.

Response to recommendation 28 – Supported

The PCMC has recommended legislative consistency in the time periods provided to seek a review of a decision at the Queensland Civil and Administrative Tribunal. Currently, under section 219G of the *Crime and Misconduct Act 2001*, the CMC or a prescribed person has 14 days to initiate an application to QCAT to review a reviewable decision by a unit of public administration, but under the *Queensland Civil and Administrative Tribunal Act 2009* a party has 28 days to bring an application for a review of a decision.

The Government considers it is important that before an application is lodged by the CMC under section 219G, that the CMC be given adequate time to consider whether they should review a decision and 14 days is not considered long enough.

Investigative Powers and Hearings**Recommendation 29**

The Committee recommends that the Government gives a high priority to completing the review of Chapters 3 and 4 of the *Crime and Misconduct Act 2001* as previously recommended by the CMC and the previous PCMC and supported by the former Government in 2009 – in order to develop uniform provisions with generic application to CMC functions where appropriate.

Recommendation 30

The Committee recommends the Government gives a high priority to completing the review of the provisions of the *Crime and Misconduct Act 2001* to ensure the Act clearly sets out which privileges are abrogated or unaffected by the relevant provisions and provide certainty to the operations of the CMC.

Response to recommendations 29 and 30 – Under consideration

These issues were the subject of recommendations 14, 15 and 17 of the 7th Parliamentary Crime and Misconduct Committee Report No. 79, April 2009, *Three yearly Review of the Crime and Misconduct Commission*.

The Government acknowledges that there is some ambiguity around the application of the provisions in Chapters 3 and 4 of the CMA. This ambiguity arises primarily as a result of attempting to preserve the functions and powers relating to crime and misconduct when the *Criminal Justice Act 1989* and the *Crime Commission Act 1997* were repealed. There was no attempt in the replacement legislation, the CMC Act, to achieve any degree of uniformity.

A review of Chapters 3 and 4 should also involve a review of the provisions in the CMA that set out whether a privilege is abrogated or unaffected as referred to in Recommendation 30.

The Newman Government will consider these recommendations and the timing of any legislative review having regard to the Government's priorities and subject to any recommendations or findings in the report by the advisory panel to be delivered to the Attorney-General and Minister for Justice by 14 March 2013.

Witness Protection and Operations Support

Recommendation 31

The Committee notes the excellent record of the CMC in the area of witness protection and recommends that the CMC continue to have responsibility for the witness protection function.

Response to recommendation 31 – Under consideration

The protection of witnesses giving evidence in major criminal trials, who are or potentially will be in danger as a result of the assistance they have provided to the Queensland Police Service, CMC or other law enforcement agencies is important to combating major crime.

The CMC's witness protection program is part of a national witness protection program and the CMC reports a 100% success rate in protecting witnesses from harm. The Government acknowledges the CMC's excellent record in the area of witness protection and agrees that these functions remain the CMC's responsibility.

However, given the advisory panel is currently reviewing the *Crime and Misconduct Act 2001* and the operations of the CMC and its related agencies, the Government will reconsider this recommendation once the report of the advisory panel has been delivered to Government.

Public Interest Disclosures

Recommendation 32

The Committee recommends that future PCMCs monitor the operation of the *Public Interest Disclosure Act 2010* and the CMC's role within that Act to assess the ongoing adequacy of the Queensland whistleblower protection system.

Response to recommendation 32 – Noted

The *Public Interest Disclosure Act 2010* (PID Act) and the protections given to Queensland whistleblowers form an integral component of Queensland's integrity and accountability framework.

Currently the Public Service Commission has, under the PID Act, the oversight agency role to: monitor the management of public interest disclosures; review how public sector agencies deal with PIDs generally; and undertake an educative and advisory role in relation to the PID Act. However, from 1 January 2013, the oversight agency role for public interest disclosures will be transferred to the Queensland Ombudsman by virtue of amendments made in the *Public Service and Other Legislation Amendment Act 2012*.

Under the PID Act, the CMC has a role to provide advice and assistance to whistleblowers and receive PIDs in certain circumstances. The Government agrees that an assessment of the CMC's role in performing its role under the PID Act should be a matter for further review by future PCMCs. However, the PCMC does not have a general oversight role in relation to the assessment of the ongoing adequacy of the Queensland whistleblower protection system, which is currently the role of the Public Service Commission, but as outlined above will from 1 January 2013 be the role of the Queensland Ombudsman.

Corporate Support and Governance

Recommendation 33

The Committee recommends that section 213 of the *Crime and Misconduct Act 2001* be amended to clarify protection given extends to a range of information, including but not limited to the following examples: staff security vetting information, staff and external participant's research surveys, the records on internal committees, and internal investigations of CMC staff. The *Crime and Misconduct Act 2001* should also clearly state where reports are provided to the PCMC at the Committee's direction, they are subject to parliamentary privilege.

Response to recommendation 33 – Under consideration

Section 213 provides for the confidentiality of information obtained by the CMC and restricts a person's right to access that information except for certain purposes.

The Government agrees that information obtained by the CMC through its officers undertaking the functions of the CMC, should be afforded appropriate protections from being disclosed or produced in court, where the disclosure is not made for any of the purposes set out in the *Crime and Misconduct Act 2001* (CMA).

However, how the current legislative protections in section 213 of the CMA can be amended to provide greater clarity requires further consideration by the Government before a final position on what amendments, if any, need to be made.

Oversight of the CMC

Recommendation 34

The Committee recommends that section 300(2) of the *Crime and Misconduct Act 2001* be amended to provide that the chair of the PCMC must be a member nominated as chairperson by the Leader of the Opposition.

Response to recommendation 34 – Not supported

The *Crime and Misconduct Act 2001* (CMA) provides the PCMC's membership comprises four Government and three non-Government members with the chair nominated by the Manager of Government Business (as amended by the *Parliament of Queensland and Other Acts Amendment Act 2012*).

In the 54th Parliament, the Manager of Government Business nominated a non-Government member as chair – Ms Liz Cunningham, Independent Member for Gladstone.

The Government does not consider amendment of section 300(2) of the *Crime and Misconduct Act 2001* is necessary to support the bipartisan nature of the PCMC. The PCMC has consistently operated in a bipartisan manner and should be able to continue in this way whether the chair is nominated by the Leader of the Opposition or the Manager of Government Business.

Recommendation 35

The Committee recommends that section 292(f) of the *Crime and Misconduct Act 2001* be amended to fix the timeframe for the review of activities of the CMC to every five years.

Response to recommendation 35 – Not supported

This issue was the subject of recommendation 26 of the 7th Parliamentary Crime and Misconduct Committee Report No. 79, April 2009, *Three yearly Review of the Crime and Misconduct Commission*.

The former Government supported the recommendation in part on the basis that:

"...the pace of social, technological, legal and demographic change...a five year review period would not be sufficient to keep pace with developments or monitor any slippage of standards."

The former Government agreed to amend the CMA to provide for a fixed three year time frame for each review as this would allow the PCMC to effectively plan and conduct its reviews in advance.

The Newman Government agrees a five year timeframe in between reviews is too long taking into account the nature of the CMC's work and the importance in the CMC's operations and activities being regularly scrutinised. The Government supports the current position of reviews being linked to the parliamentary terms of the Government.

Recommendation 36

The Committee recommends that the Attorney-General and Minister for Justice review the recruitment and selection processes for Commissioners to ensure that sufficient time is allocated to allow a process to run in its course, including factoring in an appropriate timeframe for seeking the bipartisan support of the PCMC.

Recommendation 37

The Committee recommends the Government take a more active role in promoting the importance of CMC Commissioners to ensure that the highest quality candidates are attracted to applying for the positions without the need for Government to seek out or head-hunt applicants to apply.

Response to recommendations 36 and 37 – Supported

The Crime and Misconduct Commission (CMC) comprises the full time chairperson and four part time commissioners, who meet at regular intervals to decide on CMC business. The quorum for a meeting is three commissioners or four should a decision about a report is to be made. Therefore, it is imperative that any vacancy in a commissioner position is finalised in a timely manner.

The Attorney-General and Minister for Justice will review the current recruitment and selection processes to ensure the quality of future commissioners continues to be of the highest standard and the recruitment process allows for new appointments to be made in a timely manner.

Recommendation 38

The Committee recommends that section 317(7) of the *Crime and Misconduct Act 2001* be amended to allow the Parliamentary Commissioner to delegate his powers under Chapter 12 of the *Police Powers and Responsibilities Act 2000* to a legal practitioner engaged by the Speaker under section 315(2) of the *Crime and Misconduct Act 2001*.

Response to recommendation 38 – Supported

Under Chapters 11, 12 and 13 of the *Police Powers and Responsibilities Act 2000* (PPRA), the Parliamentary Commissioner may undertake regular inspections of the CMC's controlled operations records, assumed identities records and surveillance device warrant records.

Section 317(7) of the CMA, enables the Parliamentary Commissioner to delegate his powers under Chapters 11 and 13 of the PPRA to a legal practitioner engaged by the Speaker under section 315(2) of CMA. There is no similar provision allowing the Parliamentary Commissioner to delegate his powers under Chapter 12 (assumed identities) of the PPRA.

The Government agrees to amend the *Crime and Misconduct Act 2001* in accordance with the Committee's recommendation.