



PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE (SUB- COMMITTEE)

Members present:

Dr A.R. Douglas MP (Chair)
Ms G. Grace MP
Mr M.T. Ryan MP

Staff present:

Mr B. Hastie (Research Director)
Mr M. Gorringe (Acting Principal Research Officer)

PUBLIC HEARING—THREE YEARLY REVIEW OF THE CRIME AND MISCONDUCT COMMISSION

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 4 NOVEMBER 2011

Brisbane

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Committee met at 9.08 am

CHAIR: Good morning, and welcome to all. We are reconvening the Parliamentary Crime and Misconduct Committee hearings. This morning we are meeting as an approved subcommittee, by resolution made yesterday, due to the inability of a number of other members who are on the committee to be here. We apologise for them not being here but the difficulty was one of those things that was impossible to get around. One of the members in particular who lives out west is a bit ill.

DUNNE, Mr Tim, Manager, Local Government Programs, Department of Local Government and Planning

NOSSE, Ms Bronwyn, Director, Legal Services, Department of Local Government and Planning

CHAIR: This morning we are hearing from Bronwyn Nosse and Tim Dunne from the Department of Local Government and Planning. We would like to thank you for coming and for making a submission. Would you like to make some opening remarks?

Ms Nosse: I am the CMC liaison officer for internal staff matters for the department, and Tim is our CMC liaison officer with respect to local government councillor misconduct complaints. We both work quite closely together but we both work on quite separate matters. In terms of the internal staff matters, we have very, very few. Two or three in a year would be quite a big year. As you would appreciate, we are quite a small department. Definitely the bulk of our liaison with the CMC is done by Tim, and formerly by me, in relation to allegations we receive about potential official misconduct on behalf of councillors and mayors. That is definitely where the bulk of everything sits in our liaison with the CMC.

Mr Dunne: The department obviously has a role in overseeing the performance of local governments in Queensland and ensuring that the highest levels of accountability and integrity are maintained with local governments and the councillors. The Local Government Act enables the local government department to undertake certain investigations and monitoring roles. Using those roles, we work collaboratively with the CMC on certain misconduct matters, both specific allegations against individuals—primarily councillors but sometimes others as well—and systemic issues that in local governments could lead to more serious misconduct occurring at later times.

Currently, we have about 25 matters that we are investigating ourselves and some others that are going through the processes in the Local Government Act for dealing with misconduct. That is the Local Government Remuneration and Discipline Tribunal and the local government regional conduct review panels, so that is at the hearing stage of whether misconduct has actually occurred. There are probably 25 under active investigation, with a few still to be heard by the panels and the tribunal.

Ms Nosse: One thing I do want to stress is that we do not play any role in investigating the conduct of council employees. That is something that the CMC liaises directly with the council itself on.

Ms GRACE: So these are just the actual workers of the department that you deal with?

Ms Nosse: I deal with employees of the department, and Tim's domain is solely in relation to councillors and mayors.

CHAIR: I have some questions. I am interested in the issue of devolution back to the councils themselves and also the issue of the referral to outside agencies for investigation of complaints. I will start with the issue of devolution first and then we will get to the other. Can you explain to me your current processes and how you have found that?

Mr Dunne: I think it is better that Bronwyn talks about how it has been devolved to the Department of Local Government and Planning about its things. In our cases, in the Local Government Act 2009 and the City of Brisbane Act 2010, the powers granted to the Department of Local Government and Planning are very specific about councillors. As Bronwyn said, if it is allegations of official misconduct on behalf of an officer, the department does not have the jurisdiction to be investigating the behaviours of individual officers. Plus the department does not have any powers to take remedial action against an officer, so we cannot discipline an employee of a local government but the Act does give us powers to take action against an elected representative of a council if they are found to have engaged in misconduct or official misconduct of some form. In those cases, the CMC does not refer matters of official misconduct against an officer of the council. We understand that it devolves it through to the chief executive officer of the council to investigate. We really do not have much experience of or exposure to what happens in most of those cases.

CHAIR: The second issue is the councillors and the involvement of both yourselves and outside agencies. I would like to know what your experience is with this currently and whether there have been any significant changes? You have people, for example, giving answers to questions and not being sworn on oath—those sorts of issues. It is very different from a CMC type approach to an external agency. Can you enlighten me?

Mr Dunne: The department does have the ability to take evidence under oath. We have hearing powers. We can call witnesses and require them to come and give evidence under oath. The Act does provide that it is an offence for someone to lie as part of these processes. Suitable warnings are given to people at the beginning when they are interviewed by departmental officers of the risk if they lie, or if it is a hearing and they engage in contempt in any way, that they could be facing criminal charges. So we do have those powers. You are right, though: we generally do not hold formal investigations where we require people to take oaths on Bibles. We try to deal with them a lot less formally than that, but if we believe as part of the investigation we are going to end up with possible criminal prosecutions in the courts we do take those a lot more seriously and do look to take evidence that can stand up in a court of law.

CHAIR: How long have you been using the current approach as opposed to previously referring most issues to the CMC cart blanche?

Ms Nosse: I do not know if there has been any significant change. Certainly since I have been with the department it has been the same process where we will get in a complaint even from another councillor or a member of the public. We will assess whether it involves official misconduct or refer it to the CMC. We normally have a very good relationship with the CMC whereby they will assess it and they will normally speak to us before the matter is referred back. They will consider things such as jurisdiction and who is best placed to look at a particular complaint. I think the bulk of them—correct me if I am wrong, Tim—are referred back to the department to action. That has probably been the case for quite a number of years.

Mr Dunne: I think this has been facilitated by a provision in the Local Government Act 2009 that clarified that the chief executive of the Department of Local Government and Planning is an appropriate person for the CMC to refer complaints to. While we had powers under the Local Government Act 1993, it was not that specific. The CMC did work with us and did refer matters to us, but the Local Government Act 2009 made it much clearer that the department is an appropriate agency for those types of complaints to be referred by the CMC to us to deal with. We have seen a marked increase since the Local Government Act 2009 came in in the number of matters being referred to us.

CHAIR: Is there a pattern of anything in particular? What I would be interested in is issues of false accusations, that sort of stuff.

Mr Dunne: I do not have the specific statistics in front of us. I am sure the CMC would have better statistics of what they are referring to. A lot of them relate to alleged conflicts of interest, that councillors are making decisions where their private interests intersect. That is a lot of them. They come in on a range of issues, but we have not had a lot of complaints about false accusations.

CHAIR: Vexatious types of things.

Mr Dunne: A lot of vexatious complaints do not get as far as us. As Bronwyn said, before they even get to the CMC the agency involved has to form a reasonable suspicion that official misconduct has occurred. So there is a screening process there but also we understand—and we know because we have discussions with the Crime and Misconduct Commission on a regular basis—that they undertake a review and assessment of each complaint. Through those processes very few vexatious and frivolous complaints get referred to the department to investigate.

CHAIR: Are you confident that the system that you are using is effective and is delivering results both for the public and I suppose for the councillors themselves?

Mr Dunne: Yes. We are doing the best we can investigating some of these matters. Some of them are extremely complex and involve very complex financial transactions and things like that. In those cases we make sure that we get suitably qualified people to assist the department in those areas, but I think we are doing the best we can to investigate these matters.

Ms Nosse: In terms of effectiveness, we are working with the CMC to enter into a section 40 arrangement in due course which will hopefully avoid any double handling between us, and it will give the department the ability to deal with potential official misconduct complaints in the first instance. That is something that is part of the Building Integrity project that we are working with the CMC on. That is probably an area in which we could improve effectiveness and efficiency in terms of the actual process.

Mr Dunne: Since the restructure of the Crime and Misconduct Commission with the establishment of the local government and government owned corporations group, there has been much more proactive feedback. We know that they are monitoring more of our investigations. We are yet to have them come back to us and say we have stuffed up an investigation or anything like that, so they are monitoring us much more effectively with our new regime.

Ms GRACE: Would you like to expand on your submission that both the CMC and the department would benefit from a direction under section 40 of the Crime and Misconduct Act on how complaints of official misconduct are notified to the CMC?

Ms Nosse: Certainly. A section 40 arrangement, as you may know, allows the department to deal with complaints in the first instance. At the moment, we get a complaint, we assess it as potential official misconduct and it is then referred to the CMC. The CMC makes an assessment of whether it is potential OM and who is best to deal with it. A section 40 arrangement would allow us to have an agreement with the CMC that the department deals with complaints on certain topics in the first instance. So it avoids the need to refer it to the CMC and for them to refer it back to the department. We think that would significantly speed up our assessment of complaints and how we deal with complaints.

We have been liaising with the CMC for quite a number of months in order to get a section 40 arrangement in place. The CMC have advised us that it is part of the Building Integrity project. They need to be assured that the department has sufficient processes and procedures in place to adequately deal with these complaints. We have received an interim report back from the CMC and we are hopeful of entering into an arrangement with them in the future which would allow that to occur. The whole point really is to say to the department that the CMC is confident of our ability to handle certain classes of allegations. It avoids the double handling in terms of the initial referral.

Ms GRACE: I have two quick questions. So you are able to classify those complaints easily? I guess if they fall into a grey area then the agreement might be that you refer it, but if it is clear you want to do it in the first instance. That is the first question: are they clear enough in that manner to be able to do that? My second question is about public confidence. Do you think that not referring it and merely taking it in the first instance may diminish public confidence in the process?

Ms Nosse: We are confident in our ability to handle these matters. In reality, we see the section 40 as avoiding the initial duplication. It does not alter how we deal with the complaint. I think the public and definitely councillors are very familiar with the role of the department in investigating these sorts of complaints. Tim's group has been doing this for a significant amount of time and I am confident of our ability to continue the same process. I do not believe the section 40 arrangement would change that. Under a section 40 arrangement there is certainly no reason that we still cannot pick up the phone and speak to the CMC. Particularly anything that falls outside a specific category is something that, in my opinion, we would just refer to the CMC. We would not take a chance on that.

Ms GRACE: So you are not suggesting any changes to the direction under section 40; it is just that your ability to enter into those agreements, directions or whatever you are going to enter into should be maintained?

Ms Nosse: That is correct. We do have a strong relationship with the CMC and we do often pick up the phone and say, 'This has come in. How do you suggest we deal with it?' There is also a reporting back process as part of the section 40 arrangement with the CMC. So the CMC would still maintain, I guess, an auditing—for lack of a better word—arrangement with the department where it continually assesses the complaint and how we dealt with it and whether or not we dealt with it in a satisfactory manner.

Ms GRACE: Just for clarity, you are not suggesting any changes? You believe it should stay as it is and the ability to do these arrangements under section 40 should be maintained?

Ms Nosse: That is correct.

Mr RYAN: That is a great suggestion about section 40 and it continues building that devolution ownership for the department, so I commend you for that recommendation. I wanted to clarify the importance of providing transparency of process to the complainants so they are still aware that, although you are managing the complaint under a section 40 direction, you are still oversighted by the CMC should anyone want to complain about your process.

Ms Nosse: Absolutely.

Mr RYAN: I think that is a great recommendation and I commend you for it. The question I had was whether or not the department has given any thought to what I have heard, and it is a little bit of anecdotal evidence about complaints that are managed internally by councils where usually they are investigated and managed by the CEO. I understand that a lot of CEOs are now outsourcing those investigations and the complaint management process to external providers. Has the department given any thought to whether or not that is within the confines of the principles of the devolution project and whether or not the department can provide any more support or direction to councils?

Mr Dunne: Yes, we have. We are mindful that, with the breadth of Queensland and the different scopes and different sizes of local governments, it is very difficult for all councils to be able to maintain the skills and expertise of qualified investigators internally to do complex matters, particularly rural, remote and some of the Indigenous councils. It is just not going to be possible for them to have trained investigators inside council to do it. We understand that there is a need in time to hire external contractors.

In addition, a lot of these complaints can involve senior officers in council. The CEOs themselves are often the subject of some of these complaints. It would just not be appropriate for the CEOs to be investigating themselves. We have had former ministers asking us what types of oversights to look at those types of things. We have tried that but, ultimately, as was pointed out before, the Crime and Misconduct Commission does oversight all those investigations. There have been cases—and we had one yesterday—where the Crime and Misconduct Commission has approached us about an investigation undertaken by an external contractor for a council and said, 'Is the department interested in just reviewing that investigation to make sure it was all aboveboard? Can you work with us to ensure that the public trust Brisbane

in that investigation is sound?’ We do know that sometimes it is necessary for councils to do it. We understand the needs of certain councils to outsource. It is consistent with the idea that one size does not fit all councils, but you are right: the necessary checks and balances need to be in place. We understand that is what the CMC does.

Mr RYAN: Has any thought been given to the department taking the role of effectively being the outsourced investigator?

Mr Dunne: Yes, there have been discussions about it internally. I think the main issue has been whether we have enough resources ourselves—trained investigators inside the department—to take on that function.

Ms Nosse: On that point, I would also like to note that any internal staff investigations are usually undertaken by an external body from the department. Most of the department’s investigators—and there literally are just a handful in Tim’s team. The legal services branch has no trained investigators. As such, when we have a complaint of official misconduct against a staff member, I do not have a trained investigator that I can appoint to a particular matter. For that reason, the department itself outsources those complaints.

Mr Dunne: If I can just add that we have undertaken investigations of official misconduct and allegations against officers. It is primarily in Indigenous communities, where the Crime and Misconduct Commission will ask the department to look at some of those things particularly because, in those small communities, tribal groups and family relationships make it very difficult to find anyone in the community who could be independent enough, either from the complainant or from the subject officer, for it to occur. So there have been occasions, and we currently have two investigations going on in Indigenous communities of senior officers in those councils. But they are in many cases also linked to alleged official misconduct by councillors. So there are a few times when we do it, but it is usually restricted just to Indigenous councils, because they lack some of those resources.

Mr RYAN: In those instances where you have had to carry out those investigations, were you acting under the authority, in a sense, of the referral of the matter back to the chief executive of the department so that you would have those investigative powers under the CMC Act? I am just wondering about what head of power your department and your investigators would have to go into a council and say, ‘I want to see these documents.’

Ms Nosse: My understanding is that we would have been relying on investigation powers under the Local Government Act rather than anything under the CMC Act.

Mr RYAN: Okay. Are they broad enough, in your experience?

Ms Nosse: Yes, I think it is a very broad power of investigation which vests in the department, particularly with respect to, as you just indicated, obtaining records from the council. We are of the view that they are sufficient.

Mr RYAN: Okay. Thank you.

CHAIR: Is there a bit of a gap? Is that what we are hearing—that there is this problem with the smaller councils, even though we have had amalgamation, where they just do not have the resources for this particular thing and that something needs to be done to address that issue? Is that what we are hearing?

Mr Dunne: I am not sure if we have any evidence of a specific gap, but we are just aware that there have been some occasions on which the Crime and Misconduct Commission has asked the department to look at the actions of officers in some small remote councils, because either they lack the resources to do it internally or they have concerns about the relationships between the parties involved that they would not find someone with sufficient independence to undertake the investigation.

CHAIR: So what is the frequency? Can you give us some idea, because it may be something that we have to make a recommendation with regard to?

Mr Dunne: My feeling would be that we have done only, say, three or four of those in the last year and a half under the Local Government Act 2009, so it is not a lot. I do not know if the Crime and Misconduct Commission would like to refer more or fewer, but we have received only about three or four of those types of matters in the last year and a half.

CHAIR: That sounds fine. Are you happy? Thank you very much for coming this morning. We appreciate the answers that you have given us. You have certainly answered some questions that we have. We have taken the submissions, we will take on board what you have said this morning and we will endeavour to make recommendations. Of course, we make recommendations to the government and the government has to make a decision about what it does with those recommendations. We will endeavour to make sure that you have some feedback on what occurs. We would hope that we can progress some of those things, though—the idea that we continually improve the process. I thank you both Tim and Bronwyn for coming this morning and I thank the department for its submission and its responses to the other submissions. Thank you.

Ms Nosse: Thank you for your time.

GOODE, Mr Tony, Workforce Strategy Executive, Local Government Association of Queensland

CHAIR: We will move on to the presentation from the Local Government Association of Queensland. Mr Tony Goode is standing in for Mr Greg Hallam, who, unfortunately, has had to attend a funeral in Cairns for the late Mr Tom Pyne. Would you like to make a statement on behalf of the Local Government Association of Queensland before we ask some further questions?

Mr Goode: Yes, I have a few broad comments to start with. Greg asked me to pass on his apologies. Unfortunately, when he was asked to deliver the eulogy it was something that he felt that he could not decline, given former councillor Tom Pyne's role with the LGAQ. So if I am a bit scattered this morning, I apologise to the committee in that regard. My role at the LGAQ is workforce strategy executive, so I have a fair bit to do with matters to do with workforce issues and, naturally, things such as discipline—all of those matters—come through my area to some extent. So a lot of the matters that I will deal with today are probably based on some practical experience that we have had over recent times. I appreciate that some of these may be a bit more detailed than the committee is seeking, so please feel free to jump in and stop me at any time.

Can I begin by indicating that the association of local government has generally a pretty good relationship with the CMC, and we want to acknowledge that. Probably over the past five or six years, or seven or eight years, we believe that there has been some significant improvement in the way in which the CMC has interacted with local government, and we want to acknowledge that from the word go. Overall, we believe that there have been some improved response times. Several years ago, one of the biggest complaints from all of our councils regularly was the slow response times from the CMC. Overall—I mean generally, although we will talk about a few specific areas—that has generally improved. The difficulty with the late response, of course, is that it often leaves it too late for effective investigation. A lot of councils complain, and even to some extent still complain, about the amount of resources being wasted by having to follow up, to find out where investigations are at the time. It does not create good relationships with the complainants and certainly a lot of our councils feel that they have more and better things to do than ringing up and finding out where matters are at a particular time. But as I said, overall we believe that there has been a general improvement in response times.

There has been a general improvement in the management and investigation processes in recognising the implications of how they conduct their business in some of our councils. We have previously had complaints about how the CMC would often arrive unannounced, particularly within smaller councils—smaller towns—which led to anxiety and angst without the eventual outcome necessarily receiving the same level of attention. We have generally found that that has improved and we seeing a lot more sensitivity to the political implications and social implications of how they conduct their investigations in those small towns. So we want to acknowledge that.

We also want to acknowledge that over the last seven or eight years we believe there has been, anecdotally, general governance improvement across local government. Previously, you would see a fair degree of similar style complaints coming through all the time. We have noticed a noticeable drop-off in those types of complaints coming through, and we put that down to the efforts of a number of organisations, of which the CMC must be included. So we believe that something is being done right and that all parties are responsible for that, including the CMC.

We also want to acknowledge and pass on very strong congratulations to the CMC for its continuing collaboration on the pre-election campaign—the Don't Risk Your Campaign initiative, which was run at the last local government elections and which they are now in the process of kicking off again for the coming March elections. It is far too easy for many candidates to use the CMC in a negative way leading up to an election and we believe that Don't Risk Your Campaign is a very worthwhile initiative. It is a collaborative arrangement between the CMC, the LGAQ and the department, and we want to congratulate and thank the CMC for that.

We also want to acknowledge the fact that the management of the CMC has demonstrated a willingness to sit and listen and talk on any matters that we want to raise with them at the senior level and a willingness to collaborate where it is considered appropriate. We think that has been great and we think that has contributed a fair bit.

They are all the positives, and I suppose it would be unrealistic for me to come along and say that everything is good and rosy. There are some negatives, and I would like to talk about those. Generally, within local government there is still a continuing sense of concern that the complaints management element of the CMC is probably part of its second-tier order of business. That is understandable, when you consider what the CMC is there for. They deal with some pretty big stuff. We understand that. But there is often a sense that local government is put on the second tier, and sometimes that may be reflected in the experience and nature of the investigators and the time and the resources allocated to local government matters.

We believe that, as a result of that, there are times that the complaints process has proven to be a bit sloppy, that it could be handled much better. By way of example, we have had a number of occasions on which complaints have been referred back to councils. When you actually read the nature of the complaint which has been assessed by the CMC—the substance of the complaint—and when you read

Brisbane

the accompanying documentation, there is quite a bit of a disconnect between what the complaint is suggested to entail and asked to be investigated compared to what the supporting documents say. That has led to, on a couple of occasions, the investigators having to go back to the CMC to check, to confer, to see whether or not there has been a disconnect, and most times we have found that, in fact, there has been a disconnect. Alternatively, some investigators have gone ahead with it and they have run into some concerns, with the complainants challenging the integrity of the process—if, in fact, they are investigating something which is not the real nature of their complaint.

Ms GRACE: Are you suggesting that it is not so much a legislative flaw, per se—you do not need to change the legislation—but that it is more an administrative or a process issue? Can I just clarify that?

Mr Goode: Very much so. Again, it comes down to what we believe, I suppose, and that is we think we are a second tier of business, if I can put it that way. I am not trying to be critical of them in any way, shape or form, but the inexperience of some of the investigators and their lack of understanding of the local government environment sometimes leads to a flaw in the judgement of the nature of investigations and the way the matter is being reported back. That in itself leads to more difficulties which, again, questions the whole integrity of the process, which does no-one any good.

There is still an issue about timing. While I indicated from the front that, generally speaking, there has been some improvement overall, we are still being confronted with instances of significant delays in what we would regard as not the biggest investigations. Yesterday I had brought to my attention one investigation that was commenced over 12 months ago now. Computers were confiscated, people were put on notice, people were told to stand aside while all of their offices were searched and stuff was taken away. Twelve months later, that matter is still unresolved. Despite the intentions of the councils to try to find out what is happening, they are still not getting a satisfactory answer as to what that means. Without going into the details of the case—the rights or wrongs, the innocence or guilt—there are two senior people involved, one of whom has since left, simply on the basis that they cannot put up with this type of behaviour and treatment any longer. The report to me by the executive manager of that particular council was that they can understand and accept the fact that the person left, simply because of the way they were treated and the ongoing nature of the investigation. If the matter had been resolved earlier, one way or other, that could have been addressed. So it is the whole time line.

Ms GRACE: Mr Goode, in relation to, let us say, that case specifically, have the requests for updates gone to some of the most senior people in the CMC? Is it the CMC themselves that are investigating this?

Mr Goode: In this particular case it is a CMC investigation itself.

Ms GRACE: Have you gone to a senior person in the CMC to get some feedback and are you not getting feedback at all, or are you getting feedback but it is not satisfactory feedback to say, 'We've completed the investigation'? Can you give us a feel, because this could potentially be an area where the legislation could be improved to say that some form of regular feedback or advice or something could be put in. I do not know, but are you suggesting that, maybe for things that do go on for a long time, there should be some provisions such that the request for updates must be taken seriously and given?

CHAIR: As a guide or something.

Ms GRACE: Yes, as a guide or something. How do you feel about that?

Mr Goode: My preference would be for some form of mandatory regular report on a predetermined period—every three months, every four months or whatever—but I appreciate the limitations of that. The advice that has been given to me is that they have sought from the investigators where it is at and did not receive a favourable response. The advice I was given then was that it did go one stage higher, but I do not know how far they went. They were not given any indication of where it was at and how long it might be before it could be resolved.

Ms GRACE: When you say 'they', is that the local council to which the complaint—

Mr Goode: This is the council itself. No, this is the matter that is being addressed by the CMC going into the council itself. The LGAQ has not been brought into it.

Ms GRACE: You mentioned that there is one case that you are referring to, and I understand that you always bring one. I know that you have noticed that there have been improvements and all of that. We take that on board, but quite clearly, even though there have been improvements, you do not want these kinds of things to drag on unnecessarily. Is the one case you are referring to an aberration, or are you saying that there are a few of them? What is the case?

Mr Goode: The anecdotal reports we are getting back is that it is not an isolated matter. It has happened before in terms of the delay. I have no information in relation to the behaviour of the investigators, which I do have in this particular case. So I cannot say realistically, but certainly I am suggesting to you that this is not an isolated incident and that the reputation of the CMC out there in local government land is such that this would not be regarded as an aberration.

Ms GRACE: I can understand. If there is a big fanfare where computers are seized, people are stood aside, there is a serious complaint and there is all of this very serious type of action that has taken place and then you hear nothing, as an example—I do not know whether that is necessarily the true case, but let us assume for the purposes that you are here—for 12 months and despite every attempt you are

Brisbane - 6 - 04 Nov 2011

not receiving an update, I can kind of see that that would be a concern not only for the public interest—people thinking, 'How come this has been allowed to go on without any feedback?'—but also for the organisation's confidence that the matter is being progressed satisfactorily.

Mr Goode: A by-product of this whole exercise in this particular case is the way the whole process unfolded in people walking into an office environment in a local government environment—not a criminal environment—and immediately directing people to stand aside, throwing pieces of legalistic papers on their desks asking them to stand aside and confiscating their papers. These people are not used to this type of behaviour, and I appreciate the situation. The way the process unfolds and the integrity of the process is important for people to appreciate the integrity of the outcome. The minute that a process is flawed or perceived to be flawed or perceived to be poorly managed, there will always be question marks about the actual outcome. What I am suggesting is that we have to get the process right in a way that is understandable and appreciated, whether it be in the public interest or the council's interest or the employee's interest. If they do not respect the process to some extent, there will always be a question mark on the outcome of that investigation. I think that is an important issue, but we are very much about getting the process right.

CHAIR: I hate to interrupt, but are you suggesting, then, in dealing with local government, irrespective of their size—the majority of them are not large—that there should be a different mechanism? Do you think the mechanism that currently is being applied is overtly heavy-handed and is ultimately what is compromising the ability of both the council and the public to interact properly? Is that what is happening?

Ms GRACE: Or, alternatively, Mr Goode, is it more about the lack of feedback and the time lines? Clearly if something needs to be confiscated, you are not going to stand in the way of it being confiscated.

Mr Goode: Absolutely, no.

Ms GRACE: But is it more in that lack of information—that is, where is this and what is happening? Is that the kind of complaint you are getting back from your members?

Mr Goode: I would suggest it is both to some extent. We would strongly propose that in relation to the conduct of investigations within local government the CMC should have access to practitioners or investigators who have some exposure or experience in local government matters and have an appreciation of the environment so that the way they conduct themselves and conduct that investigation is cognisant of that environment. I am not suggesting it has to be necessarily a soft environment or anything like that. It is just a realisation of an appreciation of the way that that operates when you have members of the public—

Ms GRACE: Can you just clarify: what would be the unique experience you would need in local government matters? Just give me one. What would be the main thing that you would like—

Mr Goode: For starters, it is a political environment. Some of our investigations range from being against mayors, between elected members, senior officers and just officers, and each one of those is a different type of investigation. Some of our office environments are open to the public, and you would expect that there would be a appreciation of the effect of barging into an office in an open environment full of members of the public as opposed to a behind-the-scenes environment. So it is just an understanding of it and the language of it and the nature of the beast.

Ms GRACE: But that would not be unique to local government, though. You would assume that some government departments would be in a similar situation.

Mr Goode: Absolutely.

Ms GRACE: They would be in a similar situation if they are senior officials, and then you have departments that are in the open and departments that are behind closed doors. I understand what you are saying, but I was just trying to get a grasp. How you ensure that someone has a unique set of skills in every single area that they deal with is difficult and I just wanted to get a flavour of the kinds of things you were talking about. Thanks for that.

Mr Goode: Sure. I appreciate that. I also accept the fact that I think an improvement could be made to the response time—just keeping people informed of what is happening in itself, because, like all of these matters, it is the uncertainty that is the worst part of it. Particularly depending on the nature of the investigation, if you have some very senior managers being investigated we have duties of care to those particular managers. If you do not know what is going on with that environment, it makes it extremely awkward for you to exercise that duty of care towards that manager. With regard to the one I am talking about, I know one particular manager has racked up a significant legal bill, with the council agreeing that should the investigation show that there was no misconduct on his part that legal bill will be met by the council. The deputy CEO is also saying that they have to spend a fair bit of time managing that particular guy now because he is under a fair degree of stress, and it is very hard to manage a person who is in a stressful environment when you do not know the full extent of what is happening.

Mr RYAN: Mr Goode, the majority of matters involving complaints against council officers would be devolved back by the CMC to the council unit, to the CEO. How well placed are small councils, remote councils and even the large metropolitan councils in dealing with those complaints?

Mr Goode: It would be fair to say that very few councils, other than probably the very large councils, would have the in-house expertise to conduct a thorough investigation into every allegation. Even the larger councils, I would argue, would on occasion be best positioned to outsource that to an experienced investigator, whether it be for lack of expertise or purely and simply for the matter of independence of conducting an investigation.

Ms GRACE: Does the LGAQ offer any services in that area?

Mr Goode: Yes, we do. We actually do them in-house ourselves as in LGAQ staff who are qualified in that area, plus we have a small number of what are called preferred people who we subcontract to on particular matters. With regard to our smaller councils, there is no-one within their workforce who would be able to conduct that investigation. More importantly, in those small rural and remote environments it is not one that you would want to conduct if you still want to live in that particular environment after the event. So in those cases they generally do have access to outsourcing those investigations, which they do. The downside of course is that it is a cost. They are the smaller councils. They are least likely to be able to afford that additional expense. Of course, the cost of conducting an investigation in rural and remote areas is much higher than it would be in Brisbane, where you can have people travel to and from home every day. You have to actually fly them out, accommodate them and all of that stuff. So there is an extra cost. I hope that answers your question.

Mr RYAN: It does. It then leads probably to a slightly more philosophical question, and that is about the principles underpinning the devolution project, which is all about ownership of integrity and building those integrity structures within the agency—and that is why the agency is usually best placed to actually deal with those complaints itself. Because of the difficulties with investigating those matters, not only from a financial point of view but also from the community point of view, do you think councils are struggling to build that culture of integrity within their agency because it is difficult to take ownership of investigations for those reasons that you have outlined?

Mr Goode: No, not in the least. I think there have been significant improvements over many years and councils' level of integrity internally is quite high at the moment. The difficulty is not for a council building that integrity; the difficulty is for the council having to conduct the investigation into that matter. I have conducted a number of investigations myself and it is an awkward situation when you are dealing with people in a small environment. I have been there myself. I have had to interview people and then I go back to my motel, which is the only pub in that area, and those people are sitting around that same table. So I have no issues with the nature of outsourcing of investigations and outsourcing of complaints.

One of the areas we do have concerns with is the extremely large number of matters referred to the CMC which are in turn referred straight back to councils. Most of our CEOs will tell you that they expect that on every single occasion they refer it to the CMC it will come back to them for investigation, and there is very little recognition or credit given for the fact of what type of situation that exposes that CEO to, again, in those small towns, particularly if the allegations are made against people who have some form of power over that CEO. The CEO is in an awkward situation from day one having to refer a matter—sometimes very confidentially, not even informing the mayor or the elected members that they are referring it. It then comes back. They are told to investigate it. They have to make a decision whether to investigate it and how it is going to be investigated, and that sometimes involves people who are very heavily influential in that town and community on who is going to investigate it. Our advice would be that we would love to see an extra capacity for the CMC, rather than just referring matters back to the CEO for investigation, to refer it back with the direction to engage an independent investigator. It takes the pressure off the CEO of having to make that call, sometimes against people who are in fact their employer.

Mr RYAN: That is a good point. As an alternative, has there been any thought given to perhaps suggesting or lobbying the local government department to take on that role of doing those investigations? I guess the view of the association might be that you would still like to manage the process through an outsourced investigator.

Mr Goode: We would still prefer it to be sent to an outsourced investigator. We would not necessarily support the DLGP being in that role. We do not necessarily see the DLGP as the regulator of each local government. They have a particular relationship with councils and then you start to bring in that regulating role as well when it comes to individual performance management.

Ms GRACE: Mr Goode, has the LGAQ had any meetings with the CMC about some of the sensitivities with some of these complaints and the manner in which the devolution comes straight back? Has the issue about the best way for them to make an assessment about whether it actually puts the CEO in a very difficult political situation been discussed? You want the public confidence as well that you are not actually investigating someone who has the ability to take a job away—that kind of stuff. Have you had any meetings with the CMC to try to work out a protocol? Are you able to do a section 40 direction or something about how best that would happen? I understand what you are saying.

Mr Goode: Greg has had a number of meetings with the CMC at higher and lower levels. Generally speaking, they understand and expressed an appreciation of the situation and are looking at ways of trying to balance that public confidence in the independence of the process, which is the CMC's overarching role, with recognising the awkward situation in which our CEOs are put. They have not yet come to a conclusion.

Ms GRACE: Do not feel compelled to do this, but we did not receive a written submission from the LGAQ. Is there something you would like to actually give us at a later stage? You might like to ask Mr Hallam about specifically addressing that issue of the devolution and how you filter that so that you are clear about not putting someone in a difficult position and what your thoughts might be on that. Do not feel compelled, but it would be nice to get some additional written feedback if you can drop us a short note or something. Is that okay, Mr Chair?

CHAIR: That sounds fine.

Mr Goode: I will take that on board. I will take it back to Mr Hallam. Is there a time line for that?

CHAIR: No, I do not think so.

Ms GRACE: As soon as possible says our secretariat!

CHAIR: Whenever you can do it would be great. We have one further question.

Mr RYAN: I have one final question. It relates to one of the principles of building integrity and that is managing risk—the risk of officers and elected officials being exposed to things that might challenge integrity. Has there been any work done by the LGAQ around identifying particular risks and managing those risks within council agencies, council organisations?

Mr Goode: We get involved in a number of investigations. We will often use an instance of complaint and if we believe that potentially is something which may occur in other organisations then we have an internal process to try to elevate that to bring it to the attention of other councils and look for overall solutions. We have a number of initiatives designed to improve government's requirements. You have probably seen our councillor handbooks. We have a thing every year which are called elected member updates, or GEMs, where we actually look at issues that have arisen over the last 12 months, whether they be legislative issues or regular complaints against councils. Each concern is identified and then that forms a basis for our subsequent report back to all councils. We actually go out—

Mr RYAN: Like case study type things?

Mr Goode: Very much like a case study. Its whole intention is to use real life instances to try to prevent that occurring in other locations.

Mr RYAN: Do you work with the CMC on that in terms of both guiding the response and also providing that case study feedback to the CMC so that they can use that as part of their work?

Mr Goode: We are represented on a number of the subcommittees of the CMC. Prior to those sessions that we run we contact interested bodies, key bodies, one of which is the CMC, and ask them what are some of the emerging issues or concerns that they identify. We would then filter that into our particular programs.

CHAIR: Tony, we interrupted you when you were making your presentation. Did you complete that? Is there anything further you want to say on behalf of the association?

Mr Goode: No, overall the questions addressed most of the things. There is only one matter that was really brought to my attention. When I was told I was coming this morning, I quickly sent a message out saying, 'Is there anything significant?' A couple of people came back to one area. The issue is when is a complaint a complaint? There have been a couple of instances where, in the process of investigating one particular matter, it is not unusual for witnesses or complainants to raise other things in some form of reprisal activity. Somehow or other those matters find themselves being brought back to the CMC itself and then brought back to that council as another issue to be investigated despite the fact that no-one officially raised it as a complaint. That begins a rollout process and it is never ending. I suppose the position of the association has always been that, while we appreciate the fact that if a matter is brought to someone's attention, regardless of how it is brought to their attention it needs to be addressed, but it can lead to a constant reprisal culture. We would like to see that addressed somehow. Realistically you almost have to say to them, 'Is this a complaint?' That is the first thing.

The only other matter that was raised with us was the issue of the media. There was an instance only recently as an example, but I was told it was not the first time. A CEO was told during the course of an investigation that the matter was confidential and they could not talk to anyone else about it. They directed their executive management team that they could not talk about it when they were asked questions about what was going on. They said, 'We're bound by silence. I can't talk to anyone about it,' only to find that it had been released to the media the next day. It put that CEO in a very awkward situation when confronted by the council who asked, 'What do you know about this?', and he said, 'I knew about it but I wasn't allowed to tell you because I was sworn to silence,' and yet it is in the media the next day. I have no indication of how it got to the media. I have no knowledge of that. It is just that on that particular occasion the CMC is the one that copped the bucketing as a result. They may have been completely innocent but, again, it comes back to that whole integrity process. It is just something that I was asked to bring to your attention that maybe the CMC needs to address. We certainly will be raising it with them. If they do not release it to the media, which is understandable, they may want to consider finding out who did and take some action. You talked about the public interest earlier, that type of behaviour internally does not generate the confidence in the CMC process that we try to engender within local government.

CHAIR: I would like to thank you, Tony, for presenting this morning and stepping in for Greg Hallam at very short notice. We will take on board the requests, suggestions and answers to questions. The process will be that we will make recommendations. The recommendations go forward to government. The government ultimately decides what will happen as a result of those recommendations and then returns it back to the committee for our deliberation. We then see whether we can have something progressed out of that. We will endeavour to share that information with you and your members. One would hope that you will see some progress out of the deliberations. This is a three yearly review process. We are really reviewing what we have done over the last three years. Thanks very much for this morning. Thank you for coming along.

Mr Goode: Thank you. Again, apologies for Greg. Greg asked me to express his apologies. Again, it is acknowledged that the LGAQ does regard the CMC as a friend in court and would continue its collaborative approach to deal with those things.

Ms GRACE: We understand. Thanks, Mr Goode. Well done.

CHAIR: Thanks.

GALEA, Mr Adrian, Audit Manager Corporate Ethics, Queensland Rail

CHAIR: We would like to welcome Mr Adrian Galea. Thank you very much, Mr Galea, for coming this morning.

Mr Galea: Thank you for the invite.

CHAIR: We thank Queensland Rail for its submission. We thank you for your interest. Your ability to come this morning is most welcome and refreshing. The process is, as you have probably seen, not inquisitorial. It is one really of trying to gauge what you feel we can assist with in some ways. As I say, it is a three yearly review. I would welcome any opening remarks you have on behalf of Queensland Rail with regard to this hearing.

Mr Galea: To begin with, I will just give a little bit of background about how Queensland Rail came under this crime and misconduct umbrella again. As a government owned corporation we were exempt for about two or three years, but we fell under the Act before that. Legislation changed I think in July of last year and the government owned corporations again were brought into the fold of the CMC. Queensland Rail had a bit of a grace period after that because of the sale process and the company being split. So Queensland Rail as opposed to QR National fell under the CMC umbrella again from 1 November. We have had coming up to 12 months worth of dealings with the CMC again.

Once we found out that we were going to be part of that relationship, I tried to do a bit of homework and talked to some colleagues from other agencies about how it was all going, how the relationship works and what the processes are. I got a bit of a mixed response from different people. Overall, it was positive. I must say that, since working with the CMC from 1 November, they have been very helpful in supporting us through the process of understanding what is and how things are supposed to work. I give special thanks to Mark Docwra, who is in the room I believe. Any time I need something or need him to attend one of our training sessions or information sessions, Mark has made himself available as have other members of staff. That has been appreciated. It is great hearing it from someone directly rather than indirectly. That has made my job as the liaison on behalf of our chief executive to bring it together quite easy—being able to say, 'I'm not quite sure but I know someone in the CMC who might be able to come,' or I will just give them a call or send an email and get a response. That has been appreciated.

We have had a number of cases that were referred to the CMC. It would be fair to say that we are still learning about what is and what is not official misconduct and what is and is not the accepted process and protocols. Again, the CMC has been working with us to try to understand that. I find them very approachable, which I do appreciate.

Mr RYAN: As a government owned corporation, when a complaint is made against one of your officers, go through the process for me about how you would investigate that complaint and whether or not you would use your own staff or outsource investigators. At what point would you then refer it to the CMC?

Mr Galea: You have hit one of the issues in your last point there—that is, when we report it to the CMC. My understanding of the rules is that we are to report it on the mere suspicion. Clearly, that is a bit of a problem at times because we are still trying to get the word out there of when things need to be reported through the process. We are working on that. To go through the process, once we realise it is a matter that could be potential official misconduct, either myself through Internal Audit or our HR teams—and we have spent a fair bit of time trying to educate them as well on the process—will fill in an official misconduct form. That comes through to me. I have authority from the chief executive to send that straight through to the CEO; I do not need to bounce it off anybody. Once that is done, I then send a brief summary email to the chief executive and our chief HR officer to let them know that the matter is being looked at and being referred to the CMC. In many cases we will ask for verbal authority. Queensland Rail does not believe we can sit on these things if we can avoid it. Once we have an issue we like to deal with it straight away—as quickly as we can.

Ms GRACE: Do you have any problems with that?

Mr Galea: We do not, in the sense that the CMC are always extremely good. They give it to us either on the spot if the person on the help desk can do that or, alternatively, they have to wait to see a senior officer. But it is very rare that we do not get the response back that day or the next day first thing. So that is appreciated.

I know from discussions with the CMC that there is probably some issue about us constantly seeking these verbal authorities. We hope in due course to get a section 40 that will give us some clarity over that matter. I am not too sure how wide the CMC are going to make section 40, if they propose to do so. That is something that we will hopefully keep working on in due course. We put a submission in for such a claim to get a section 40 earlier on in the year. But, quite rightly, the CMC did not know us and our ability. So they were assessing us and trying to understand our processes. I appreciate that. It does cause a bit of administration constantly phoning someone up and saying, 'Look, can you drop what you are doing because I want to get this verbal authority straightaway?'

CHAIR: You seem very sure of the system you have. You obviously have an in-house system that you have used for the last couple of years with regard to these issues, and it is fairly robust by the sounds of things. Is that correct?

Mr Galea: Yes. It is a system that is developing. Like anything, we have to keep improving it and we are certainly doing that. Before the split occurred between the two organisations—QR National and Queensland Rail—we actually had a couple of roles that were dealing with misconduct type matters. That was our general manager ethics and our internal audit unit, which used to work quite closely together on different occasions. With the split, ethics got devolved to internal audit. I have taken the lead on that as the manager of that area, reporting to the general manager internal audit.

One of the things that we had to work on was to try to bring our HR colleagues to an understanding that official misconduct involves them as well in relation to reporting. Certainly in the old days—the previous time we fell under the CMC processes—we would not have considered a lot of the HR material as being official misconduct. So it was a little bit new to us to understand that once we fell under the CMC processes again things like bullying by a manager or somebody who is in a supervisory position or in a position of trust looking at inappropriate material could be reportable. Again, that is one of the issues we have been working on and continue to work on. Our next level is still to work with senior and line management to get them to understand that they need to report some of these issues to either HR or internal audit rather than trying to deal with them in-house, which some of them may still be trying to do.

CHAIR: Under the new system—the system that you are now working under—do you feel that it has slowed your capacity to manage the problem that you confront? Has it added an unnecessary layer to what you are doing? Is there a more streamlined way of doing it?

Mr Galea: I am an internal auditor by background, so process does not necessarily scare me. The fact of reporting things through I think has been a positive. I think it has improved the effectiveness of bringing it all together, which we never had the leverage to do. Now we are talking with HR, we are talking with legal, we are talking with risk et cetera, and we are talking with management. We get to bring it all together. So I think the process has been extremely effective. Bringing us under the CMC has helped us from that point of leverage.

It has created administrative issues. I seem to spend an inordinate amount of time pulling together the documents and updating our databases et cetera to try to keep on top of everything. Part of that is that we are looking to resource up as a result, because we do not want to just be looking at detection and investigation. We really want to get into the prevention side, the education side, of Queensland Rail. We have already done that by doing some roadshows in North and Central Queensland, by letting people know it is ethics, by letting them know the sorts of issues we are finding in the investigations that we are doing. As an investigator we are running the sessions rather than having somebody else do it, so we can talk firsthand. We are trying to raise the protocol and the understanding that way. So it is not any one thing that I am saying that is leading to the increase. It is a number of things because we do see it as coming together quite nicely. We want to tap into that and keep reinforcing that and grow that understanding and awareness across the organisation.

Ms GRACE: In your submission you mention that there should be a more definitive definition of official misconduct.

Mr Galea: Yes, please.

Ms GRACE: I think it is a good point. Some of the examples you used before were almost like workplace issues that maybe an employer should be able to handle under policies and they may not fall under what you might in your mind think of as official misconduct. Can you elaborate on that?

Mr Galea: Absolutely.

Ms GRACE: Is it something that could happen in a guideline in your view? Does the legislation need amending? Should we get a more definitive understanding about what the CMC's role is as against what an employer's role is in relation to their employment contract? Could you elaborate on that please?

Mr Galea: I guess we could do one of two things. We could actually try to change the legislation or we could work within what we have got. Working within what we have got, I would like to see the reporting change. That will come out of a section 40 ultimately. I do not mind reporting things to the CMC. I have had no-one complaining about the fact that we are reporting things to the CMC. It is more a timing issue about, 'Look, I'd rather report to you every quarter that these sorts of potential official misconduct issues could be occurring.'

Ms GRACE: Do you have a clear definition in your mind of what official misconduct is or are you still blurry?

Mr Galea: Certain cases can throw me, and it is not the first time that I have had to phone up the CMC and say, 'Help me out with this.' I know sometimes I believe they may even go to a more senior officer to get some clarity given that when we phone them up the level of knowledge that we have about the particular circumstances is quite limited.

Ms GRACE: Minimal.

Mr Galea: Absolutely. The definition I find at times confusing. For instance, a classic case is, as I understand it—my CMC colleagues will clarify—

Ms GRACE: He is sitting behind you.

Mr Galea: For example, two employees fighting, which may constitute assault and which may lead to dismissal, I would have thought would constitute official misconduct. But because there is no breach of trust, because they are employees and not in a supervisory position, it does not meet the nexus necessarily of official misconduct. So we do not need to report that.

Ms GRACE: So it is official misconduct in the employment law part because clearly you have a policy that there is no fighting on the job. But it is not official misconduct because it is not public interest misconduct where there is corruption or something like that happening.

Mr Galea: Yes. I am still trying to understand where the demarcation occurs which is why sometimes we do phone up. As I say, friends at the CMC are very helpful and try to understand. More I tend to take the view of reporting rather than not reporting. Other than in a couple of instances, we have not been knocked back as not being official misconduct.

Ms GRACE: Would a section 40 help that or are there any guidelines that you have that you can refer to that the CMC has issued? I know that sometimes that is hard. Is there anything like that that assists you at all?

Mr Galea: I do not think there have been any real guidelines on what is official misconduct on a case by case or example by example basis. The ones that are used are quite clear. A section 40 should help, but again it depends on how tightly the section 40 is worded. To go back to an earlier question that you asked, there are certain issues. For example, if somebody takes \$10 out of a till, clearly that is official misconduct. It is something that could lead to dismissal regardless of the low value. But do we really need the CMC to tell us that they are going to refer it back to us at that point?

Ms GRACE: Good point.

Mr Galea: I have no problem if it needs to be reported to the CMC. So those are the sorts of things that I would like to see more clearly defined and to set some thresholds around. I would like to see the thresholds up here rather than down here to give us a bit of flexibility.

Ms GRACE: The difficulty there is whether it is a one-off occurrence or whether it has been part of a systemic in-house agreement that everyone can take \$10 out of the till as long as they put it back the next day. That is where you often do not know when one flows from the other. I know it is not easy. But you are right. If it is just a clear one-off instance, as opposed to being a systemic cultural thing that everybody does because it has been ignored and clearly that cannot go on, that is where the difficulty is. I understand your dilemma.

Mr Galea: From a resourcing perspective, it is often a case that we may focus on the one issue rather than the broader trends because of some of the administration that we need to go through. Clearly if we had more time, if the CMC had more time, there might be more quality in looking at the broader issues rather than the individual issue of whether this person did this at that point.

Ms GRACE: Does the CMC help with training and that kind of thing? I know you said you have excellent liaison with the CMC.

Mr Galea: I am not sure whether at the time when the other government owned corporations came into play there was training or induction at that point. Because we came in after the fact, our training has literally been through inviting Mark and some of the other CMC team members to come along and speak and present at different things or meeting with them to do clarifications. That has worked quite well for us. But, having said that, I attended a CMC day session or half-day session quite recently that they put on which I do not believe they have put on for the last few years—but then again I have not been involved in the CMC before last November. It was great to see. Having practitioners able to roll up to the CMC and do a bit of networking but also hear some topical issues from the CMC was a positive.

CHAIR: Adrian, you talked about setting the bar higher, which I think is a good idea. Are you suggesting—and I do not want to put words in your mouth—that your systems are so comprehensive that it may be that the extra workload that you are acquiring is also duplicated at the other end and that there is an unnecessary quotient of that and that we need to address that?

Mr Galea: Yes. You are quite right. We keep a database, a register, of all of the issues. We follow them up. The CMC keeps a database of issues as well. We are assessing. We have protocols that if I need to get legal advice I can go next door to our legal team et cetera. So there is an element to that. I think it comes back to that threshold issue about what can we be left to run on our own behest and just report to the CMC at a certain date or point in time.

CHAIR: Do you see it that you could maybe report—I am thinking as I say it—either monthly, quarterly or whatever, and Grace raised the point that if there are systemic issues that you feel you have to report then they would be mandatorily reported? Should we have that sort of system? Is that the system we should be running? Would that save the CMC? The CMC does have a workload, some of which is recurrent and may well be somewhat redundant. That is really what you are describing—a redundant loop going around, and we have to stop that.

Ms GRACE: Or at least get some clarity around it.

Mr Galea: My thinking is that the process is effective but it is not necessarily efficient. It is as efficient as it could be. Thinking outside just as an alternative, maybe an assessment at some point of our system and ongoing audits, as well as the requirement to report to the CMC, may be a way of satisfying the CMC that either we have a handle on the processes or we need to improve, and that would free them up to some extent from having to deal with the day-to-day issues.

A couple of days ago I got a phone call at about four o'clock about two issues and management said—which was unusual—'Adrian, we just have to deal with this straightaway for various reasons.' I dropped the CMC an email and called them to let them know that I was going outside the normal process, which they were okay with. We are catching up by putting the forms through now. There may well be some efficiencies in the process there. Through a section 40, if nothing else—if that is worded sufficiently for both parties to agree to—we could make it work using the existing facility. But I think on a long-term basis, where an agency can be assessed as having a good process and is actually switched on with the requirements of government integrity and accountability, then maybe we can be given a little bit of flexibility which would hopefully free the CMC up for quality purposes as well.

Ms GRACE: Equally, Adrian, you do not want to waste too much time on things that you may see as trivial that are really just employment based issues. You would rather be able to get on with those and not necessarily see them as official misconduct and have to report every single one.

Mr Galea: I have no problems with reporting.

Ms GRACE: But I do not want the CMC's time wasted with that kind of stuff either, to be honest with you.

Mr Galea: That is the other issue. Correct.

Ms GRACE: I think they have more than enough to do without having to filter through your paperwork, with all due respect.

Mr Galea: Correct. That is true. The issue is: do you see \$10 potentially taken out of a till as being official misconduct, as opposed to somebody who leaves work maybe an hour early and shows on the time sheet as having worked a full day, which may be worth \$15, \$20 or \$25 or whatever that person is paid per hour?

Ms GRACE: I would call them employment issues.

Mr Galea: It becomes a matter of definition of what is 'misconduct', 'official misconduct', 'employment issues' and 'other'.

Ms GRACE: I see.

CHAIR: Would you be prepared to give us something with regard to that? I know it is another thing to do, but I think you have made a very good suggestion which we should try to implement. We are seeking not so much to diminish the capacity of the CMC but we really want to sharpen up what it actually does and not make it do things that it really ought not to be doing with an organisation. Yours is a large organisation with a lot of resources. Generally this seems to be duplication which is very unnecessary. We need to deal with that. From hearing the bulk of the papers, I can imagine the paper chase. I think that has to come to an end. That may save the CMC an enormous amount of work as well. Could you give us something on paper that we can then work with?

Mr Galea: Absolutely.

CHAIR: That would be great.

Ms GRACE: As soon as possible. Our secretariat is looking over again.

CHAIR: Adrian, I would like to thank you for an excellent presentation and that tremendous suggestion at the end. Is there anything further that you wish to say?

Mr Galea: No, only that I think the CMC is extremely effective. I think while they are working on updating some of the publications that they have put out over the years since 1992 after Fitzgerald, the CJC et cetera some of them still remain texts that you can refer back to. They are brilliant documentation. Also we have good support from the CMC. I have the ability to pick up the phone and speak to someone like Mark, which I totally appreciate. My goodwill because of their helping us flows outside as well because when someone says, 'We have to report that to the CMC,' I am able to say we should be dealing with it anyway as a good business and the CMC has not done anything that we would not do anyway to deal with it.

CHAIR: With that little rider you added you made an interesting suggestion. I was an accreditor with the college for many years. You talked about those simple things that were somewhat HR issues which fall over into the issue of being misconduct sometimes. If you were seeing those things as ongoing, if you could highlight those little incidents that you can give the organisation clues on as almost like a three-monthly update. That is a tremendous advisory tool that you can utilise and spread across all organisations. I am sure the CMC would appreciate that. I thank you for your presentation.

Proceedings suspended from 10.32 am to 10.57 am

FRASER, Ms Elizabeth, Commissioner, Commission for Children and Young People and Child Guardian

SALMON, Mr Barry, Assistant Commissioner, Commission for Children and Young People and Child Guardian

CHAIR: I reconvene the PCMC hearings and I welcome Commissioner Elizabeth Fraser and Barry Salmon, who are here this morning. Thank you very much for coming. We welcome your submission. We welcome the response to the request for submissions. We appreciate the fact that you have made the effort to come along and participate in the process. We would like to hear whatever you have to say as opening comments and we will have some questions to follow after that if it suits.

Ms Fraser: Thank you very much for the opportunity to address the committee as part of your review of the CMC. At the outset I would like to advise that I am a member of the CMC's Crime Reference Committee. I would like to confirm that, as mentioned in my written submissions, the commission is generally very happy with the way the CMC performs its statutory functions.

By way of introduction and I guess the reason I am here, I want to highlight that we are a statutory body that is essentially funded by the state government with a broad mandate to promote and protect the rights, interests and wellbeing of children and young people in Queensland with a particular remit for those who are most vulnerable. The mandate that we have includes promoting laws, policies, practices that uphold those children's rights and interests especially when they are at risk.

We have interests that link in through our administration of the employment screening system—the blue card system as it is known throughout Queensland. We also conduct research about particular matters that affect children. Through our functions we have a capacity to collect information directly from children particularly in some environments like youth detention, foster care and residential facilities. We advocate through that information in their individual interests but also for systemic improvements where that information highlights there is a need to do so.

So in a sense I have a particular interest in the work of organisations like the CMC to combat any suspected official misconduct that might impact on vulnerable children, particularly in statutory service environments such as foster care or youth detention. I also have an interest in crime that impacts on children and young people and I regularly refer information to the CMC about alleged relevant criminal activity which is defined under section 25 of our Act to include criminal paedophilia and organised crime. I have no concerns about the CMC's management of these referrals, and the interface between the CMC and the commission in this regard is very strong. We have some formal liaison agreements in place between the commission and the CMC which were implemented in 2008 to clarify our respective roles and responsibilities and the relationships between us in relation to complaints about services provided to children and young people, and that agreement confirms that both agencies are committed to avoiding the inappropriate duplication of effort and to ensuring that our resources are respectively used effectively. We have quarterly liaison meetings under that agreement between senior officers of both agencies, and that provides an opportunity for us to share relevant information and collaborate on issues of shared interest. From my perspective, that liaison operates very well.

But the purpose of my attendance today is to draw to your attention two issues for the committee's consideration which may be food for thought in your review, and they both relate to youth detention. As I have said, I have a mandate and a remit to advocate for these young people and we have access to particular sources of information which inform the reason for our advocacy in this respect. The first is the extent that responsibility for investigating suspected official misconduct should be devolved to agencies and the second relates to mechanisms available for providing feedback to young people who have made complaints.

Firstly, in relation to official misconduct investigations, I acknowledge the importance of agencies developing capacity to manage their own misconduct investigations. However, I believe that the youth detention environment is sufficiently unique to warrant closer, in-depth involvement by the CMC in these investigations. I say this because I think there are a number of factors which are specific to youth detention centres that would suggest that it is more appropriate for the CMC to retain greater responsibility for the investigations and, specifically, that devolving responsibility to on-site detention centre management should not form part of that approach. These factors, from my point of view, include the vulnerability of the young people concerned due to their ages and the social circumstances that lead to their detention; the power imbalances inherent in the detention centre environment; and the fact that detention centres would likely present to young people as closed systems, that they are shut off from the outside world. Young people in detention are also likely to have lower levels of education than the general population and are unlikely to have a full appreciation of their rights, including their right to complain or the circumstances in which it is appropriate to do so.

My 2011 survey of young people in detention—and I can leave copies here for you—supports this view, as in only 52 per cent of the young people who responded—and that was nearly everyone who was in those detention centres at the time—indicated that they did not think they would be taken seriously if they told detention centre staff that they felt unsafe or were worried about something. This hints at a distrust of on-site mechanisms and may be a barrier to young people reporting that their safety or

wellbeing is at risk, and it therefore also may be a barrier to the CMC gaining a full understanding of any issues within that service environment. In the circumstances, I would suggest that close involvement of the CMC in any official misconduct investigations in youth detention centres would assist to improve the confidence levels of the young people in those centres—specifically, that concerns raised by them alleging official misconduct will be taken seriously and independently investigated.

Secondly, in relation to the mechanisms available for providing feedback to young people in detention after their complaints have been investigated, I believe that such feedback is critical to building the credibility and usefulness of the official misconduct procedures. As part of the CMC's role of monitoring the management of allegations of official misconduct by agencies, I believe the CMC should specifically assess and record whether the outcomes of each investigation have been adequately communicated to the complainant and any other young people who may have witnessed or been impacted by the alleged conduct. Timely and appropriate information about the outcomes of complaints alleging official misconduct is another factor which will assist to improve the confidence of these young people in detention that their concerns have been taken seriously, and knowing that the CMC actively monitors the provision of that advice to the young people will, I think, help build agencies' capacity to respond to such complaints. In summary, I believe that vulnerable young people in those environments warrant special consideration by the CMC and I would welcome the committee's consideration of those two matters as part of your review. I am happy to answer any questions. Thank you.

CHAIR: Thank you very much.

Mr RYAN: Thank you, Ms Fraser, for coming in. In your submission you refer to the number of instances that you have had to refer to the CMC for investigation—331 over two years. What are the relevant criminal activities that you have been reporting to the CMC? Are there any trends at all, whether from particular workplaces or particular types of criminal activity that you have referred?

Ms Fraser: In the context of the matters that we have referred, with regard to alleged misconduct, in 2010-11 we recorded 52 issues around official misconduct issues that might have been by staff or youth workers at the two detention centres. Broadly, around 62 per cent related to the Brisbane Youth Detention Centre and probably about 38 per cent to Cleveland. The majority of those were raised in that there were some issues there I guess that related to a risk of physical harm and some were around psychological harm and there was one with respect to sexual abuse or exploitation. I guess there is a broad range of things which we then look at within that sort of misconduct. There are a range of other factors that we broadly refer over with respect to things that might relate to crime issues or other matters, but in that context that is essentially what they relate to.

Mr RYAN: What was the percentage of matters that you have referred where the allegations were substantiated?

Ms Fraser: Have you got the details of that, Barry?

Mr Salmon: We do not have the exact numbers, but we can certainly provide those to you.

Ms Fraser: They would be in a rolling sense, so do you want them for a particular period? Obviously when we refer them over it takes time as to whether or not they are substantiated.

Mr RYAN: Just for the last two-year period.

Ms GRACE: Ms Fraser, if I could just go on from what you were saying there. I understand that your submission fundamentally says that the youth detention centre is a unique kind of environment. I take on board all of the issues that you have mentioned in terms of the power imbalance, the vulnerability and all of that kind of stuff. But obviously there must be some complaints that are more serious—if that is the right word to use, and I am trying to find the right words—that would require the CMC directly to be involved. But you are advocating that, regardless of the complaint that comes up—I am just trying to clarify it—the CMC itself should undertake those investigations and not devolve them to the management. Can I put a scenario to you: what if it is just a staffing thing where it might be serious to the young person but clearly it might be a minor staffing issue where they say, 'Get out of bed. You were told to get out of bed and you haven't'? I am just making that up—I do not know whether that has been a complaint or not—to give as an example. Do you still advocate that, if a complaint is made that maybe the person was roughly handled or roughly spoken to or something like that, the CMC should come in and investigate those as well, or do you think that maybe there should be clarification that in some cases where clearly it is pretty serious the CMC does not devolve in those circumstances but a decision can be made between both organisations? Can I put that to you and what your feedback might be on that?

Ms Fraser: Thank you. It would probably be useful for us to give a little bit of background from our perspective. We do have community visitors who visit the detention centres on a regular basis. They are there on a weekly or fortnightly basis touching base with each and every one of those young people to see whether they have any particular concerns, whether they are feeling safe, whether they are getting the services which they are entitled to have, whether those sorts of things are working for them, particularly in the areas of education, in terms of health, cultural support needs and those sorts of things, and if they are coming towards moving out of those facilities whether they are feeling confident about what is being provided in terms of that transition out of those centres. In that context, those young people may raise a number of issues with our community visitors. The sorts of things that you are talking about will be discussed and tested and they might relate to food, they do not feel that their belongings are being looked

after well, they may feel that they have been harassed by a particular staff member et cetera or whatever. Our community visitors work with the centre management to try to make sure that those issues are highlighted and if there is a local resolution to that that that is worked through. Those sorts of things do happen as a matter of course. Then there is a check back with the young person whether they feel that is okay, if it worked et cetera. So those are the sorts of ways in which we would deal with what I call pretty low-level issues.

The sorts of things that would come to a higher level would be if a young person indicated to the community visitor that they had had some crime perpetrated against them in some way. They would be issues that we would have a responsibility to report on, not just do local resolution. If a young person said to us that they felt that somebody had mistreated them and that they had ended up having to go to hospital because they had a broken arm et cetera, they would be the things that we would then look at with respect to what sorts of investigations we thought might relate to official misconduct.

Ms GRACE: And then you would want the CMC, if you felt that they needed to go to the CMC, in that particular environment not to devolve it back to the management but for them to have an independent kind of investigation into that?

Ms Fraser: Yes. In particular, there is a threshold issue there and we think that that is something that obviously the CMC needs to be working with the agencies around. But I guess in particular we feel that there is a perception issue also for those young people that they can be confident if those serious issues occur and if they raise those they may be concerned in a sense about that being worked through by a centre management person because of the ongoing ramifications for them in that closed environment. We feel that it is important that they understand that those issues are looked at seriously and that there is an independent body that stays pretty close to making sure that those sorts of things do not happen.

Ms GRACE: With regular reporting back and feedback as well obviously.

Ms Fraser: Yes. I think that is essential to making sure that young people understand that those facilities are there to deal with whatever it is that has brought them into those environments. It is not an environment where they are shut off from the world and they can be treated poorly by people who work in those environments and that they can be confident that there is a process that is actually worked through very seriously if those serious allegations are raised. It may be that there may be a notion that when they are investigated it is not substantiated, but then I think that needs to go back to the young person and be worked through with them as well, because I think that learning over time feeds back into an understanding of the culture within the frame.

Ms GRACE: This is my last point. I guess the issue for you would be that at least an independent person has said that that complaint was vexatious, or whatever. It is not management coming down with that decision, so to speak. There is some element that there is an independent assessment. They have determined it is serious or they have determined that it is vexatious—whatever way. It is not the management team that is saying that—as not being an independent person.

Ms Fraser: That is right.

Ms GRACE: That would give you comfort that the youth concerned would feel that at least they have been heard.

Ms Fraser: We survey them on a regular basis and we report that publicly. We would be interested to see that that is having an impact on that figure, which is highlighting that there is a significant proportion of them currently who are not confident that some of those serious issues would be dealt with. I am certainly not indicating here that I am talking about service delivery issues, which, as I say, we deal with. I am not talking about behaviour management issues; I am talking about issues that reach that notion of alleged misconduct, where there is some evidence that potentially there may have been some harm to those young people.

CHAIR: I think it sounds like a reasonable suggestion. I have some concerns and I want to raise these and talk you through them to see if you have thought about them. I have been involved in prisons for 20 years. I know a little bit about them. The custodial issues of people going into detention now are far more serious than they were even 10 years ago and 10 years before that. With the types of people in custody, there is an extreme difficulty as the young person—as a juvenile—is going into detention for more serious offences. There is a learned behaviour that goes with it and that is acquired fairly early in the piece. I am concerned that there would be a significant amount of activity that is useless activity—I am not saying that all activity would be. I think that in terms of reporting these things that would be fine. How would you manage that issue? I have dealt with these people, as you have. It is not plain sailing. I wish it were. Often these people's parents—the ones who have parents—have had a lot of difficulty with them. Schools have had difficulty with them. That has led to a whole series of other things. Would you monitor the process once you had seen the nature of the complaints? Have you seen an upward progression over the past couple of years? Is that what has led to you saying that we now have to have the CMC do all the complaints?

Ms Fraser: There are a few points in there.

CHAIR: Yes, there are a few there.

Ms Fraser: I will make one general comment about the purpose of the juvenile justice system and the detention process at the end of it. It is not taking away from the fact that some of the children who are in detention are very troubled and they have had very difficult lives. Many of them have experienced a lot of

trauma. Essentially, we have a product at the end of that that the community and others are needing to work with very professionally to, hopefully, influence some change. The purpose of it is to bring people in and work with them and see whether or not we cannot move to a different outcome, or at least shift some of it. Otherwise you are looking at a very long period and trajectory for young people going into older age when we have some opportunities, I think, to model different behaviour, to give them access to different programs and to try to deal with some of the issues that have brought them into that context and that environment and to set them on a different pathway. Part of that, I think, is that it is very important to model appropriate and ethical behaviour as well to give them examples of that. Yes, in some instances, that may work its way through in a different way than we might hope, but I still think that for that small group of young people it is really important to not in any way send signals to either the staff in that context or those young people that those sorts of behaviours are in any way condoned if they are deemed to be substantiated. I think there is reasonableness within that to feed back to those young people also about learning, about not making vexatious claims et cetera. That is all part of the educative process that we are working on. But it is absolutely critical.

We have had reviews in the past that have highlighted that some of these institutions were not mirrored by good behaviours and some of the things that our young people experienced in those institutions were not positive. I think it is important that that is an important aspect of what we make as part of our commitment. It is part of our commitments in the convention on the rights of the child—that we will behave like that. I think we have all seen in some other environments where sometimes people think that, because somebody has done something bad or poor or that they are an enemy and we are fighting against them et cetera, somehow it is okay to treat people poorly in that context and that they will get away with it. I do not think that our society signs up to that. I think a caring and compassionate community will make sure that those processes are offered to those people and that we make sure that their rights are maintained. I think that is an important stand that we make. With respect to some of the resourcing points, did you want to make a couple of points, there, Barry?

Mr Salmon: Could I add that one of the primary mechanisms through which we identify issues in detention centres is through our community visitor program that Elizabeth elaborated on before. Our community visitors are there regularly and frequently. In actual fact, in both Brisbane and Cleveland they are there almost on a weekly basis. So our ability to build up a relationship with the young people there, to identify the sorts of issues they are raising, stands us in fairly good stead in identifying those issues that are at the serious end or those issues that are really minor and trivial and do not need to be pursued. It is that experience that we draw upon to help differentiate some of those matters that may not need to be pursued by the CMC but, on the other hand, those matters where we know young people, we have had regular contact with them, and there is a reason they should be referred.

CHAIR: Has there been an increase over the past few years? Is there a pattern? One of the things that I have learned from prisons over the years is looking at patterns of behaviour, because it is very important. I am not trying to preach to the converted or anything, but can you give me an idea?

Ms Fraser: In general terms, we have been systematically trying to report on what those trends might be. I do not believe that we are seeing an increase in that sort of reporting. I think what we have been highlighting is, I guess, what it is that young people feel is the response to those issues and that is the issue that we are trying to address. I do not think there is any evidence that we are bringing forward to suggest that there are increases in claims by children about those sort of behaviours. In effect, I think potentially over time it is improving and we have a much better understanding that what is actually happening in those environments is actually working towards the interests of young people and that their views in here highlight not only what is not working but also highlight what they think is working for them. If anything, they are very positive about the supports and the access that they get to help. Many of them say that they did not have them before they came into those centres and they are fearful that they will not have access to them when they leave. So in that sense I do not think you would say that we are talking about increases of complaints about the way in which they are being treated. But I think there is no doubt that, because some of those things are being monitored and looked at, we have data now that we did not have before. Trends over time are not all that easy to establish.

CHAIR: Are you concerned that young people are not reporting incidents of serious misconduct because they do not think they are going to be dealt with in a fair way by a fair system and that if it was done purely by the CMC and they knew that was the case, that there would be a more open process of reporting and possibly we would see more genuine complaints? Is that possibly what you are alluding to?

Ms Fraser: The information I have is what some of them are saying with respect to their confidence that some of those issues will be dealt with. That could be impacting on whether or not they bring those issues forward or it may be that they just do not feel that the issues that they have brought forward have been dealt with to the level of satisfaction that they would like. I think there are some gaps in that information. As I have said, it is hard for me to say if this process that I am advocating was instituted to the level that we are talking about, I do not have the information at this point but I would continue to record it to see whether or not they start to respond, they feel more confident that their issues have been addressed. But until that occurs, it is hard to project. I think it would aid in that but, obviously, we would have to test it over time.

CHAIR: You would be confident that the CMC is the appropriate body to do that? You have had some interaction with them over time. You were a participant. You think that they are the appropriate body?

Ms Fraser: Yes.

Ms GRACE: Or an independent body—for example, a body that came in on behalf of the CMC? It was not management but it was an independent body. Would that help as well—if it was not management that was actually investigating that, but an independent body with the protections of the people who raise the complaints? I gather in some instances it would be pretty brave for young people to complain and I know if they are in this closed environment they are going to feel very vulnerable. So obviously, we should give whatever protections we can offer. An independent inquiry would be a significant part of it as well. It is not management doing it.

Ms Fraser: I think that is correct, but I think the issue is that you also have to have that sort of authority and the skill sets and the knowledge. So ultimately, I see them as the appropriate group, because they provide that. The issue then is, in order to present that level of confidence to people, that you would have to create something that had a similar sort of reputation and experience. Otherwise, the issue is that that other independent group would have to establish that credibility. Then we would have to be clear that that was perceived in that way by the young people. I am asking in this instance for active involvement by the CMC in that, because I think they have that credibility, they have that reputation. I think the young people understand that. In my view, you would have to be reasonably careful that you were not just doing another activity that was not actually reaching that standard in their eyes, or they felt that it was a second option.

Ms GRACE: That is good clarification, thanks.

CHAIR: I do not have anything further. Is there anything further that you would like to say? If you have not, thank you very much. Barry, was there something that you wanted to say?

Mr Salmon: No.

CHAIR: I would like to thank you both for coming this morning, for making submissions and responding to submissions, showing an interest and answering questions. The process from here on is that we will digest all of this information and produce a set of recommendations. This is a three-yearly review that is really reviewing what we have done, not so much what we are going to do in the future. But, hopefully, that sets a template that we then give to the government and then it takes that on board or it can choose to ignore what we have recommended. We would endeavour to make sure that you are given a response to what you have submitted and then we will endeavour to try to build that into what we do in the future and as a continuous cycle of improvement. Thanks very much for participating. Thanks for coming today. I am sorry we were a little bit late starting.

Ms Fraser: Thank you very much for the opportunity.

Ms GRACE: Thank you.

CALLANAN, Mr John, Assistant Commissioner, Crime, Crime and Misconduct Commission

McFARLANE, Ms Dianne, Director, Integrity Services, Crime and Misconduct Commission

STRANGE, Mr Warren, Acting Chairperson and Assistant Commissioner, Misconduct, Crime and Misconduct Commission

CHAIR: I reconvene the PCMC public hearing. I would like to welcome back Mr Warren Strange, Ms Dianne McFarlane and Mr John Callanan on behalf of the CMC. We would like to thank you for your participation. Is there anything that you would like to say as an opening statement?

Mr Strange: Thank you, Mr Chair. I should first note that Ms Mendelle is unavailable this morning and sends her apologies. There are some matters we wanted to respond to, particularly in light of this morning's submissions, that we thought might assist the committee. We are happy to address those and respond to any questions. Mr Callanan has a couple of matters to raise which go back to yesterday's business, and I have one follow-up issue from yesterday to work through.

Dealing firstly with the local government submissions this morning, I did want to emphasise that there was a comment made that there may be a perception that local government is in the second tier of our business. I did want to place on the record that that is clearly not how we approach that sector. We regard it as an extremely important part of the public sector and part of our business. I think the establishment of our specific local government and government owned corporations program in Ms McFarlane's area of integrity services is recognition of that. That program is led by Mr Mark Docwra, who is an assistant director, who is here today. One of the other senior officers in that area is a senior investigator—a former police officer who left the service and joined us as a civilian investigator at the end of his time as a police officer.

We are mindful of the fact that there are some particular complexities in the local government environment, particularly around legislative issues, dealing with now potentially criminal offences for failures to disclose material personal interests, misuse of confidential information. There are some technicalities around that that perhaps distinguish those investigations from other criminal investigations. Part of our rationale in establishing that program is to have an internal source of expertise in the form of a senior lawyer and investigators and other officers who will deal with the majority of complaints. Where we do take on a matter for an internal CMC investigation, if that team does not do it, they are at least available to assist and advise investigators in the operational area who are undertaking that investigation. Rather than not having any experience in the Local Government Act and being confronted with a lengthy, complex piece of legislation, we have in-house expertise.

Another way we emphasise our interest and attention in local government areas is through our prevention functions, our workshops and our very close interactions with the local government sector both here in South-East Queensland and on regional visits, and I mentioned that yesterday. I think many of the concerns that Mr Goode raised relate more to administrative issues and process issues rather than legislative flaws. I think that perhaps also applies to some of the concerns that Mr Galea identified on behalf of Q-Rail.

To go back to local government, a concern was raised about how some investigations unfold. We conduct a small number of investigations in the local government sector. They are nearly invariably related to allegations of serious criminal misconduct. When we are looking at local government officers, that involves allegations of significant fraud, procurement fraud, official corruption, improper relationships with business providers. They are serious matters and we are looking at potentially significant serious criminal offences where allegations of misuse of a significant amount of public money are involved. That is why those sorts of matters merit a criminal focused investigation.

I do understand it is very unsettling for any environment to have CMC investigators turn up exercising compulsory powers to obtain information, but it is unsettling when we do it elsewhere in the public sector. It is unsettling if we execute a search warrant on a police station. It is unsettling if we go into any other public sector agency under our powers to seize that information. We never make those decisions lightly, but we do it because we think that is the best way to protect the integrity of the investigation and to get the information. We obviously keep our intentions as far as possible within the realm of those who need to know about that operational information. We simply cannot broadcast it to all of the senior managers in the local government environment or anywhere else for that matter without the inevitable risk of compromise to investigative strategies.

We do try to work with all agencies to manage the impact of an investigation. We realise that that is unsettling. I spoke yesterday about examples where we have dealt with the Police Service once an investigation has moved from covert to overt and brought to their attention the sorts of issues we are looking at. Every investigation is different and what information we can disclose and how we disclose it is dependent on the particular circumstances and who is said to be involved in the investigation. The more senior the subjects of the allegations, that is a factor that weighs up our public interest considerations of whether we should undertake the investigation.

With regard to the timeliness issues, I have certainly noted what Mr Goode said. I will look further from our own end into some of those feedback issues, but we do have an expectation that once an investigation is known and alive within an agency we would be providing them with regular updates about it. We could look at formalising that within our own processes in terms of set time frames. I am happy to do that, but it probably needs to be coordinated at a more senior level than just investigators. They may deal with agencies and simply advise that an investigation is progressing, but I do not really see it as their place to be liaising with senior officers about the progress of matters. That should be escalated from our end.

Regarding the point about having investigators with the experience of local government, it is a difficult skill set to get somebody who has the investigative nous that we require but also local government experience. As I said, that is why we have established the program as a source of expertise to assist with liaison. We do appreciate that they are political environments, but that does not impact on our obligations to act independently and impartially. We are not there to buy into the political issues that may surround particular investigations particularly when a councillor is the subject of one of our investigations. There are obviously different camps in some councils and views will be taken about political opportunities that that might present, but we will try to do our role and do it as quickly and as effectively as we can.

The point was made that CEOs are in a difficult situation when we asked them to deal with matters. I would simply point out that, as the chief executive officer, they have a responsibility to manage their staff. I certainly appreciate that they can have difficult roles in doing that and the liaison and expectations of council that they can sit very much in the middle of some difficult and complex situations, but that is their role and we will do our best to work with CEOs when we do send matters back. The point was made it would assist them if we were able to give them a direction this might be a matter that is best handled by an external investigator. In sending them back a matter to deal with, it is certainly at the forefront of our thinking that they would be exploring those sorts of options. We would be happy to engage in discussions with CEOs if they felt that a particular recommendation from us or the expression of a view might somehow assist them.

An issue was raised about the media. Yesterday in the course of responding to the Police Union comments I did explain what our general approach is. I was pleased to see that the speaker noted that with the matter that he was talking about there was no particular evidence that that had come about from any inappropriate release of information from the CMC. It is certainly our position that we would not be, on the one hand, asking people to keep an investigation confidential and then, on the other hand, going out and making a media statement about it. We are mindful of those sorts of sensitivities. I might ask Ms McFarlane if there is anything else she wanted to clarify about the local government matters.

Ms McFarlane: I have a few things. There seemed to me to be a bit of confusion in relation to what 'official misconduct' is. It is a challenge we face always; it is not specific to local government. Official misconduct is not about the position; it is about the conduct. A lot of people will simply assume that because it says criminal or a disciplinary breach resulting in termination that that is the end of the matter. It must go back to the breach of the trust as I said, but about the conduct and the conduct has to relate to the roles, the functions and the duties. That is because we do not deal with misconduct in the public sector. A lot of the issues that were talked about this morning were not misconduct. They are serious misconduct, not official misconduct. When we talk about introducing a section 40 direction, we have to make sure that we are, in fact, getting the right matters through on the section 40 and not the employment type issues.

When you look at some of those issues, they are low volume numbers for us. That means that there is not a lot of process for us. In local government matters, there are about 500 matters a year. Government owned incorporations for the past 12 months, 2010-11, were about 100 matters. If you have a look at the GOC numbers, if you look at it that way, there are something like 20,000 employees within those 13 GOCs. In Queensland Rail itself, there are about 6,500 employees and about \$6 billion to \$8 billion worth of assets. That is a large sector with 100 complaints coming to us. If you compare that with the likes of, say, the Queensland Police Service with roughly about 18,000 employees, we get about 2,500 complaints. I accept that they are not comparable sectors, but it says that we need to know that there is a maturity within the integrity framework so that people can come forward and that is the basis of why we introduce a section 40. Then we would know the people are comfortable, they know the process, they are prepared to come forward and members of the public are prepared to go to the agency and then come forward to us.

I do not want to drown you in statistics, but I think it is important to note that in the public sector departments, 13 per cent of matters come direct to the CMC; 86 per cent come through the departments; of that, 60 per cent are by section 40. You can see it is a fairly mature organisation in that people are coming through the system, confident in the system, it can work, they can go to the department. With GOCs we have to be confident that that is going to occur and local government is the same.

Ms GRACE: Ms McFarlane, is it possible to clarify what you have said? Have you put out guidelines? Do you train them in it? I know that everyone is going to be at a different level. Some people come in early, some people have just started, some people have been there for 20 years or however many years it has been that they have been dealing with it. Do you have clear guidelines?

Ms McFarlane: We have a publication called *Facing the facts*, which is fairly well known. It is ready to be updated. In that we try to be as clear as we can. I was thinking to myself as I listened this morning that it could be a little bit more practical and have a lot more examples in it.

Ms GRACE: Clearly, they are confused. Not that we have had many, but there has been a little bit of talk such as, 'We are not really sure, what does it mean?' It could be a bit clearer.

Mr Strange: There are still instances that get reported to us that we have internal debates about: is that official misconduct or not? There is no closed category in that respect. Another way we address the issue, I think Mr Galea pointed out he had been to a forum recently. That is where we get our liaison officers, invite them from all of the agencies and have discussions around those sorts of practical issues or invite from them an expression of concerns or areas they would like to hear more from us about. We try to address it that way as well.

Ms McFarlane: We meet monthly. We have liaison officer meetings with the likes of Ms Nosse and Mr Dunne to go through those issues. We have an ongoing dialogue. We did do a fair bit of training in relation to *Facing the facts*. Actually we went to the regional areas and did some training. We have not done so much of that in the last year, but that is another avenue that can be opened up. *Facing the facts* is now a fairly well-known publication through the sectors, so it is an ideal publication to improve upon to get that right.

As Mr Strange said, we certainly do have dialogue if we are referring a matter back to a local government to deal with. If we want to closely monitor it, we do call them. We talk to them about what level of monitoring they would require. We do talk to them about, we do get and we have given directions that it should be an external investigation if we think that is right. We try not to enter into any political debate they may be having. We try to make it as objective as we can, applying the public interest test there. It may and sometimes does require an external body to look at something to satisfy the public interest test if we are not prepared to do it.

Coming back to the benefits and the balances of the section 40, there is opportunity there for us to work through those, as long as we are confident that the sector is mature enough to deal with and understand official misconduct. That is the first stage. That is the stage that we are at with local government. The Building Integrity program will look at those issues initially and we are certainly having a lot of dialogue with the GOCs in relation to that as well. I did have some other comments on the Children's Commission, but I can give you those later if you like.

CHAIR: So you are effectively saying that for those organisations that do not have the same maturity it may be best to allow them to acquire it over time; is that right?

Ms McFarlane: It is best to have them come to us first so that we can clearly ensure that they understand what the jurisdiction is. We are not up there trying to get more business. We are just wanting to know what are the types of matters coming through, what is the level at which we can be advised at a later date.

CHAIR: Rather than being formula driven.

Ms McFarlane: That is right.

CHAIR: I think we have taken that on board.

Mr Strange: Mr Goode also made a point, I think about the problems presented when an investigation expands and other complaints are made. That is not an uncommon occurrence. If there is an investigation going on into a serious incident in the workplace, it is not unusual for that to be reflective of other problems in the workplace, that the major incident that is under investigation has come to light because it is not a happy workplace, there are other issues, there is other misconduct. We often find in matters we investigate other things drop out as it unfolds. We are obviously very concerned if there is any suggestion of a reprisal against a witness in an investigation. I think all agencies should be concerned if that is raised. We would encourage those allegations to be recorded and reported. I think they need to be dealt with. It is an incident of conducting an investigation, but it is not an uncommon occurrence that more information will come out, more allegations will come out and a matter might expand. That does happen across all sectors. Unless there was anything specific on the local government, I was just going to move on.

Mr RYAN: I just wanted to ask your view about a point that Ms Fraser made in her presentation. It was about amending the devolution project application to detention centre settings, particularly for young people in detention. There may be some merit to that and I wanted your view. Are there any other sectors where we do not devolve those complaints back to the agency? I am thinking that the QPS model is changing a little following the recent report and recommendations. Are there any other agencies where those matters are not devolved as a matter of course?

Mr Strange: It is probably not a decision made on the basis of the agency. It is more around the type of complaint and those sorts of factors. In the youth detention centre context, again some statistics: so far this year we have received 35 complaints about incidents in youth detention centres; 17 came from young people in detention and a further eight were made on behalf of them, mostly by the Department of Communities; about 30 per cent of the complaints we receive about youth detention centres come from the staff. We have recently had a very heavy program of engagement with the youth detention centre staff. Our prevention people have been conducting workshops about ethical issues, reporting and addressing misconduct in the workplace. They have delivered 17 training sessions to managers and staff, eight at the Brisbane Youth Detention Centre in August and nine at the Cleveland centre in Townsville in September. We have basically covered all of their staff in those presentations.

For me the difficulty in having a hard and fast rule that the CMC will investigate every allegation of official misconduct is that there is a wide-ranging spectrum. The fact that someone is a young person in detention is a very relevant consideration for us in weighing up what the response should be to that complaint. We would attach more weight and we would see different public interest considerations if it is an allegation of assault on a young person in a detention centre than perhaps an adult arrested by police. It is a different environment. There has been a couple of incidents recently and commentary about young people being subdued during arrest situations with capsicum spray. Those sorts of matters we pay very close attention to. The use of a taser by police on a young person, again we would regard the youth of the victim or the recipient of the use of force as a very relevant factor.

Beyond that, we try not to have a hard and fast rule that we would investigate every single matter, because of the fact that it is a whole spectrum of conduct. In the scheme of things, it may be a relatively minor allegation of excessive force. Technically that is an assault, but we know those sorts of incidents and those complaints come to light. As the chair pointed out, the interactions in a custodial environment are not always easy ones. If it was an allegation of a significant serious assault causing a significant injury, any type of sexual assault, drug related allegations or supply, trafficking within a detention centre, all of those sorts of allegations we would treat extremely seriously. We have investigated allegations of that type in the past. However, to say that we should investigate each and every single matter because it happens in a youth detention centre would be a significant imposition on our existing resources and would lead to many other matters that we would think ordinarily might have a higher public interest component not being able to be actioned by us.

The commissioner spoke about keeping young people informed and I do understand what she was raising there. I think that is something that we can look at. As part one of the monitoring activities we are going to undertake this year, we conduct a number of specified audits each year. One of the key issues that we often hear about is the quality of outcome advice provided to complainants. We are going to conduct an audit across several agencies and we will pick up on that point in the context of young people in detention centres.

From listening to the commissioner this morning, I think there is some ongoing work that we can progress with the legal representatives of young people in custody. The reality is that around 60 per cent of them are Indigenous kids. They are nearly always represented by the Aboriginal and Torres Strait Islander Legal Service. The majority of the other children in custody are represented through a grant of legal aid. If they are in South-East Queensland that is often the in-house legal practice at Legal Aid Queensland. We do have good relationships with them. There is some work that we can do to liaise with those legal groups about our role and about them having confidence in the complaints process and about communicating outcomes. That can often be difficult. Young people will make complaints. The reality of the detention scheme is that they will remain in detention for the smallest amount of time possible. They may come out, they may shift through several bail addresses, their matters may be dealt with ahead of the complaint being finalised. There can often be contact difficulties there, but the lawyers are perhaps a point of continuity in that process that we can look at. Certainly we are happy to engage further with the commissioner and explore some of those issues. Beyond that I think we do need to keep the public interest consideration pre-eminent in those assessment decisions about us investigating.

Many of the matters that we choose not to investigate because they do not get to that threshold we will ask the department to deal with. That does bring in an element of independence from the actual operational environment of the youth detention centre itself. They can bring in investigators. Communities is a large department. It has a dedicated integrity unit, an ethical standards unit. They can bring in skilled investigators who are external and perhaps will not be seen in quite the same light as the CMC. Hopefully the young people and their representatives will understand that they are external to the centre in many respects.

Ms GRACE: I want to ask a quick question, and it was something that was on my mind. Do you feel that the processes are well placed in the CMC so that you are not dealing with trivial matters that you do not want to deal with and that you are concentrating on what you might call the more significant issues that the CMC is there to investigate? You are not there to handle every single little possible thing that could be defined as official misconduct or misconduct or whatever. Are you confident that there are enough processes or do we need to improve the processes so that you can do the job that you are supposed to be doing?

Mr Strange: I am very confident that our processes are robust in that respect and that what we ultimately take on for investigation is given very serious consideration in relation to all of the relevant factors and particularly the public interest. I am quite confident that what matters make it through to a CMC investigation are appropriate matters. The difficulty in that context is agencies wanting us to deal with matters.

Ms GRACE: It is in the eye of the beholder.

Mr Strange: It is important to them because of personalities or seniority or political considerations in the local government environment. We look at it in a different way. We apply the public interest test. We will say, 'Yes, those considerations might be relevant but that does not mean that the CMC should come in and deploy its powers and limited resources to conduct an investigation.' It can be difficult for them to deal with those matters. That is why the option of going to an external investigator is always a good circuit-breaker in

those sorts of particularly sensitive and contentious matters. The difficulty is having them understand that we are not a clearing house. We are not a solution to those sorts of management and other contextual problems. We are going to make our decisions about what we retain for investigation on other factors.

CHAIR: That reassures me. I was concerned that Elizabeth Fraser was stating this, but I was not getting enough collateral evidence that there was a problem. I was immediately starting to think that this was going to introduce an element which occurs in the prisons of useless appeal mechanisms, which are meaningless often for both the individuals and the whole system. But in a prison that is the currency—it is part of the deal. So we would then start seeing a CMC currency, and genuine complaints would not then get the kind of attention that they might normally get. In deference to the commissioner, she may not know that. But, from what she was saying, there was no evidence of patterns of systemic problems.

There is a systemic problem with regard to the severity of the nature of offences of those held in custody and particularly Indigenous children. That is of concern. If you are saying to us that you look at it proactively, I think that probably sounds reasonable. I think we have to address their concerns, but somehow there has to be a happy medium, because it would be completely wrong to reintroduce that currency of useless types of appeals. That would then demean the whole process as far as I am concerned, and you would not see genuine complaints coming through. I am not sure whether that was exactly what you were alluding to, but I sense that was the worry. With regard to what happens to young people in detention, is there something that we need to do as a preventative strategy when they go into custody that we are not doing that maybe will improve the mechanism to reassure people like the commissioner and others?

Mr Strange: I think our recent training program with the staff is a very significant endeavour in that respect, interacting directly with those in the workplace about their obligations, about reporting requirements and those sorts of things. I think that is something that we can continue to follow up on and monitor. We obviously do monitor complaint levels for any particular trends. I think beyond that perhaps enhancing our liaison with the agencies that provide the bulk of the legal representation for the young people who are in custody would be a useful step.

I heard what the commissioner said about confidence in the CMC and complaints processes. I think that is a difficult and a complex area. You are dealing with a population of young people who, to generalise, lack confidence in any authority figure, entity or process because many of them, as you alluded to, Chair, have had difficult histories and there are a whole heap of problems. They have had interactions with the education system, the health system, the child safety system, the Police Service—most of which have been unsatisfactory from their point of view. So expecting them to immediately develop or engender a high level of confidence in any agency is problematic, but I think there are ways that, as I said, we can liaise with legal representatives to try to work through some of those issues.

CHAIR: Dianne, you were going to say something.

Ms McFarlane: I was just going to clarify that we do not refer matters to detention centres. The public official for detention centres is the Department of Communities. So they can then make a decision as to what interaction they have with the detention centre. They can decide whether they are going to investigate. But we do not directly refer matters to detention centres for them to deal with.

On the preventative side, I think that is a good idea because they are the policy makers. They can look at the issues. They can then look at the policies they have in relation to the treatment of children or juveniles in detention. So it is an important factor not to lose sight of that they are looking at it holistically, not just from an investigation point of view. From that point of view, the development of a section 40 is not quite a matter of saying, 'What do you want to deal with?' It is a matter of us saying, 'You can't deal with these matters because we think they might be in the public interest for us to deal with.' There is a section in between, I suppose, where we say, 'We are not really quite sure,' and then the rest of the matters are section 40s. Under a section 40, it is a reverse standard, if you know what I mean. We say, 'This is not going to be a section 40 and the rest are.'

You can introduce issues there specifically dealing with juveniles. We look at that with police. A matter that may be an assault on a juvenile is not a category B matter. Education is the same—a sexual assault or allegation of a sexual assault on a child is not a section 40 matter. So you can introduce certain areas where they will not be a section 40 and we will have to look at them specifically. So what I am saying is that we can manage it within the process.

We do monitor trends, as Mr Strange said. Earlier this year we had some issues. We knew our prevention people were talking to staff in the detention area. We were monitoring complaints. We noted that, although they were essentially staffing issues, there were also some complaints from young people in there. We actually asked if we could look at what the department was doing in relation to that. I specifically went out to the detention centre with the associate director-general and we went through all of the issues and what they were doing. So we do closely monitor the strategies that they have in place, and that is because we appreciate that they are vulnerable clients. They are vulnerable children in detention, and we know that is an area that we need to consider. As Mr Strange said, to say directly, 'No. We won't deal with that,' is very difficult. We do ensure that they are a category of complainant that we need to give special attention to and we do. We also understand the complexities and the need for policy making to occur in and around the complaints-making process.

Mr Strange: Could I just raise one issue in relation to the Queensland Rail comments about the reporting threshold? That is an issue that has come up before. I think it was considered in the last three-yearly review and the committee recommended no change. There are obviously many issues. That issue has been raised over the years on numerous occasions. We have always taken the view that it is better to err on the side of matters being reported than not reported to us and that the imposition of a reasonable suspicion test starts to filter through their subjective considerations and people in the workplace who think, 'Well, I know the person about whom the allegation is made and they wouldn't do anything like that,' and so we tend not to perhaps hear about it.

It does protect the agency the way the current test is. It makes the process very transparent. With the schedule section 40 reporting, for the majority of those matters there is not going to be any delay or difficulty in the fact that they are reported to us. The agency can get on and deal with it, but we do get to hear about it. We do get to identify trends. It may be a low-level matter, but if we are seeing a spate of those from a particular location or an agency or across the sector we get all of that information. So it does ensure that we get to identify trends and emerging issues and to see what is happening in the entire misconduct environment in a way that should not inhibit agencies from dealing with the vast majority of those more straightforward matters. That was all I wanted to address.

CHAIR: I am interested in your response to the QPUE presentation and their submission. Did you have any comments, John, in particular?

Mr Callanan: I am happy to respond to any of what is in the written submission or the oral submission that was made yesterday. There was one matter that I did want to, as it were, correct. I understood the union president, Mr Leavers, yesterday in his submission to say, in the context of duplication of resources and things of that kind, that the CMC has more resources than the Queensland Police Service for paedophilia. The reality is that our paedophilia investigation team—which I am sure you have heard of referred to as Cerberus—consists of two senior sergeants, an intelligence analyst and an assistant intelligence analyst. The unit closest in function to Cerberus in the Queensland Police Service is Task Force Argos. It consists of 25 police investigators, five intelligence analysts and three administrative support people.

Our Cerberus team relies for administrative support on my area—the administrative area of the Office of the Assistant Commissioner, Crime. As well, the police response to paedophilia includes its State Crime Operations Command, which is where Argos is situated, and its child and sexual assault investigation unit, which consists of 47 investigators and again various intelligence analysts and administrative support. As well, the QPS response to paedophilia includes in each and every region at least—if not district—a child protection and investigation unit. So that emphasises that it is not about duplication; it is about the underpinning philosophy that I referred to a couple of times yesterday—namely, that we add value to the overall law enforcement response.

The one area in which it may be, so far as this kind of crime activity is concerned, that we are better resourced is our forensic computer unit. From time to time Argos in the aftermath of operations has found that there is insufficient capacity in the police computer forensics area to deal with huge amounts of child exploitation material. It is important and it is unfortunate—and we need to address the psychological fallout from this—that all of those images and so on have to be looked at, because there is a risk that some image not previously identified by law enforcement is finding its way into these global networks. So every effort has to be made to identify the child involved and the whereabouts of the child. So it is in that way that we would say that there is not duplication.

Similarly, Mr Leavers suggested that there is duplication in that the CMC has an OMCG investigative unit. It does not. We have an OMCG general referral that we call the Hydra referral, but it is not tasked with OMCGs and OMCGs only; it is tasked, as I explained yesterday, taking the strategic approach that what are identified as the most high-risk markets are the subject of investigation. Those investigations will frequently take you into the OMCG environment. You invited comments on the notion that the crime function be transferred to the Queensland Police Service.

CHAIR: Yes, I think it is probably better that that goes on the record, particularly you in your final time as the leading crime person.

Mr Callanan: Firstly, the way in which it was put by Deputy Commissioner Stewart yesterday afternoon struck me as a fair summary of our position. I think it is important to note that the position is shared by the Queensland Police Service and by the CMC. Part of the notion of returning, as it were, all of the CMC's crime functions to the QPS depends on the argument about duplication. The written submission talks, again, about a significant presence of police officers at the CMC in the crime fighting area. Again, the police contingent across-the-board—across all of our major crime work—amounts to a detective chief superintendent, an inspector, a detective inspector, three detective senior sergeants and eight detective sergeants. That is a total of 13 sworn officers. I have already spoken about one small section of the State Crime Operations Command and, of course, police state-wide. So one wonders if that amounts to a significant number—13—in the context of the overall police resources. You wonder why we are often entering into task force arrangements and joint operational agreements that allow us to work together with the QPS. As I often say, we fight above our weight. We have 13 police working in crime and it is only through engagement in multiagency and multidisciplinary investigations that the outstanding successes—if I can not be modest for a while—have been achieved over the years.

But critical to all of this is the coercive powers. Despite the wording in the written submission, we do not regard them as compulsive powers. We do not feel that we are under any compulsion to use them. But it is an important element of the way the CMC approaches those. As we often say, they are a very effective investigative tool, but they are not a blunt instrument. Within the CMC—and perhaps going back to the time of the Queensland Crime Commission—a great deal of expertise has been developed around the approach to the use of coercive powers. In my view, we are extraordinarily competent—and I think this is recognised nationally at conferences that I have attended—in the use of coercive powers. We use them in a discreet and effective way. We are perhaps more proactive in using them than some other agencies. The police, with all due respect, lack that kind of expertise. The whole suggestion raises rather more questions than it answers. I heard some of those very questions posed to Mr Leavers—issues around accountability, issues around employing competent legal staff, issues around the administrative creation somehow of a unit within the Police Service that would conduct coercive hearings.

The written submission talks about a role for the Controlled Operations Committee. Mr Leavers yesterday seemed to be talking about a role for the Public Interest Monitor in ensuring that coercive hearings are not abused. It is an extraordinary suggestion, in my view. No other police organisation in Australia has coercive hearings powers. I do not know of any globally. There are other organisations that have powers in respect of their particular legislative area to require people to answer questions. That is a different thing from setting out a jurisdiction around major crime. Again, this is no attack on the Police Service, but to give the Police Service those kinds of powers has always seemed to be, in effect, a backward move because the powers really are extraordinary powers, as I say.

So one wonders what is to become of the Crime Reference Committee, as it now exists under the present legislation and structure. An important element of that committee is the representation on it of two community representatives. Is the suggestion to be that it will just be a matter of coercive hearings at the instigation of the Police Commissioner or something of that kind? That is our response. It in part involves a certain naivety, I think, around the processes at the CMC. In my view—and you did ask for my view—it is just unworkable and unlikely to attract much support, I would have thought.

CHAIR: The witness protection function, I thought that was a bit left field. No real advantage was suggested in the submission, but is there any benefit? Is it something that the police have been asking for?

Mr Strange: Not to our knowledge.

Mr Callanan: Not the police. One gets a sense from the Police Union submission that what is desired is that all police at all times are with the Police Service and that is why you move all of those functions.

CHAIR: So it is just stacking them all up.

Mr Strange: We are unique as being an integrity agency that has a witness protection function. I commented yesterday on the historical reasons for that. I think that is really the genesis of that submission—that in other states or in some other states it is with the Police Service and perhaps that should be the Queensland position. I simply reiterate what I said yesterday—that it is working particularly effectively under the current arrangements that are established. We are regarded very well across Australia for our witness protection capability and it works well as it is.

CHAIR: In his statements, too, both in the initial part and also towards the end, he was concerned about the review of the CMC itself. He seemed to either devalue the role of the parliamentary commissioner or maybe not understand what his role was.

Mr Strange: I think there are two separate aspects there. One was about the handling of complaints about the CMC staff and the exercise of our powers. There was a suggestion of another independent oversight body perhaps coming into being. I think we would simply say that is unnecessary, given the current oversight structure of this committee and the parliamentary commissioner and his staff, the current oversight regime for the exercise of our coercive powers, which includes obviously the controlled operations requirements, the crime reference group, the Public Interest Monitor for our applications for surveillance and telephone interception warrants and, ultimately, the courts when we bring evidence before them.

Mr Callanan: And through the judicial review process we are now the subject of the third judicial review of a decision by the Crime Reference Committee to refer particular instances of major crime.

CHAIR: But historically, the CMC has morphed over time. He was alluding to the fact that we have the commissioner—because we drew his attention to that—and having investigators attached. Are there incidents or whatever that would lead us to think that we need to have that type of thing or even to consider it? We asked that among ourselves and we were going to ask the parliamentary commissioner. What were you thinking when he was saying that and what did you think should be our response?

Mr Strange: I think the other issue that perhaps created some confusion was around the call for a review process that mirrored the police powers and responsibilities review. That was a specific legislative review. Every five years that Act is reviewed in a way that a committee or a working group is formed that has representatives from key agencies, including the QPS. When I was at Legal Aid we provided a representative. One of the CMC lawyers was a representative. The idea of that forum is for those stakeholders to come together and say, 'We have this problem with the legislation on a police matter and this power does not quite go far enough because I cannot exercise it in these circumstances' or Legal Aid
Brisbane

says, 'We have a problem with this one, because it is exercised in this way and that is contrary to the intention of parliament when it was enacted.' Everyone comes together with their wish list of issues and problems and that gets fed up through the legislative drafting process, ultimately to a consultation bill. So I think that is a very different sort of review process from what this committee engages in under the section that requires the three-yearly review.

Certainly, when we are advocating for legislative change and whatever we have sought that this committee supports that with recommendations and takes that forward. There will now, of course, be a consultative process for other agencies to make submissions and address any issues about draft legislation or proposals. So I think that is covered through those existing processes.

CHAIR: That leads to my final question. It is about the review process itself. That was alluded to by Mr Leavers as well. Is there a better way? The current process in summary form is that we review the last three years and then we produce a report based on submissions and we go through this process. To be honest, a lot of the anxiety that people were expressing was not there when it came to final days of having the hearings. Is there a better way that we could do this? Do you have a sense that we need to make some suggestions on what we are doing? Is there a better way of going through this process and is that three-yearly review mechanism correct?

Mr Callanan: I, perhaps more than others in the room, have been caught up in the process—I actually forget whether it is three or four times now because the three-year cycle has not always strictly been adhered to.

CHAIR: Yes, that is right.

Mr Callanan: When you look at the legislative provision, it is about a review of the activities of the CMC. It goes on to require the tabling of a report 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. To me, that has always provided adequate parameters for an open discussion around all kinds of issues. The first one I was involved in was not all that long after the merger had occurred, and the QCC and the CJC had morphed into the CMC.

My own experience is that, given that it looks at activities as well—and this seemed to be a bit of a misconception with the references to the PPRA. That is kind of about the Act and how the Act is working. This is a much broader review. The recommendations have always, in my view, been pretty well focused. Not all of them of course have been acted on by government and that is not surprising. That might provide a context in which I can take up on the issue which was raised yesterday in respect of Queensland's money-laundering provisions. I will not take up much time with it, but what has emerged is that there was a review of the whole of the Criminal Proceeds Confiscation Act in 2006. There were a number of amendments made. There was then a review of the efficacy or the effectiveness of the amendments commencing in 2010 which is ongoing.

The reality does seem to be, as Mr Ryan suggested, that law enforcement in Queensland is opting to utilise the Commonwealth provisions. One of the reasons for that is plainly the requirement that, to commence a prosecution under the Queensland provisions, the consent of the Attorney-General must be obtained. The concern then is possible delay with that. The need perhaps to build a substantial brief to present to the Attorney-General in order to get the consent in order to get the proceedings rolling. That is not required in any other jurisdiction in Australia including the Commonwealth under the Commonwealth legislation.

The Commonwealth legislation was partly adopted as part of the 2006 review. The Commonwealth legislation has a structured approach depending on amounts of money and whether the money laundering is wilful, reckless or negligent. The Queensland provisions as enacted in the aftermath of the review are structured to the extent that the offences created are offences of wilful money laundering and reckless money laundering. The suggestion of negligent money laundering has not been taken up by government. We have addressed those things in the context of those legislative reviews.

When you look at the basis on which this three-yearly review is conducted, it might arguably have to do with the CMC's functions and powers but the prospect of recommendations by this committee being made in relation to other legislation is fairly limited if you look at what are the purposes of this legislation. That is why it does not really figure much in our submission to this committee for the purposes of the three-yearly review.

Can I deal with the other matter? We were talking about reasonable excuse in the context of coercive hearings in the context of addressing the raising of particular issues. I did not have the authority at the time. I would like to cite it for the record. The matter is *Schultz v. the Crime and Misconduct Commission*, Supreme Court of Queensland, civil jurisdiction, No. 8742 of 2003. I will not go into the facts but this is the gist of what was said by Justice Muir in relation to the notion of reasonable excuse. He said at page 3—

Curiously the act is silent as to what may constitute a reasonable excuse. It is not, so far as I am aware, a concept capable of precise definition. Presumably it was intended to give the presiding officer a degree of practical latitude so as to prevent the consequences of answering a question from causing harm disproportionate to the benefit resulting from the answer.

That is the balancing test that is applied by presiding officers in our hearings, including myself. It is a useful way in which to draw out submissions on both sides.

Mr Strange: I have two very quick points. I will not take long. One is, in fairness, something I should put on the record in relation to the Queensland Police Union. We have obviously commented on some of their submissions but I should acknowledge that the relationship between the union and the CMC I think is an improving one. There have been some pleasing developments in the union's approach to matters in recent times including supporting police officers who are prepared to complain about their colleagues. Going back many years ago that was not the case. The subject of the complaint was the recipient of the support from the union to the exclusion of all others. That is no longer the case. As Mr Leavers mentioned yesterday, willingness to give robust advice to police officers that they do not have a future in the Police Service will lead to timely resignations and that has impacts for us in terms of the timeliness of our processes and the ethical health of the Queensland Police Service. I should formally acknowledge that.

Secondly, we spoke yesterday about when QCAT came into being and whether there was consideration of matters going before the Industrial Relations Commission. I have been told that when we engaged on that, the development of QCAT and its jurisdiction, we did not adopt any particular position about the QIRC. I do not think that was an issue that was addressed at that time.

CHAIR: As there is nothing further, I would like to thank you in particular for spending the last day and a half ingesting all of that information that was made both in submission form and in answers to questions. We should be able to assemble quite a lot of reported information to make some recommendations on the basis of what we have heard. We may seek further advice from you intermittently. Thanks very much for nodding at that stage because there will be things that we obviously need some advice and assistance on.

Thank you very much for participating. Thanks to all those who have come along today. I would like to acknowledge that the parliamentary commissioner, Mr Favell, and Mitchell Kunde, who is the legal adviser, are here today.

I would also like to thank Hansard, who have been excellent. I appreciate all the work that has been done. I would like to particularly congratulate our team who have helped us here, Brook Hastie, Michael Gorringer and our new EA, Aileen. I want to thank her for the administrative assistance that makes a lot of this possible. There is a willingness on the part of both the parliament and ourselves to try to be more transparent and try to be as open as we can, and this is part of that process. There is a little bit of a push to try to make it even more transparent but, like everything, we all acknowledge the need for certain things to remain private. We acknowledge that the people who have issues that are being raised are entitled to privacy, and in that process we have to make sure that we guarantee that absolutely. So it is somewhat different to a lot of other things. As a doctor I have realised this is a very important thing in life and we can never assume that people will naturally want things to be made more transparent than they might otherwise be other than just the complaint leading to it. Thank you very much for the process.

Committee adjourned at 12.38 pm