

# Crime and Misconduct Commission



## **Public Report to the Parliamentary Crime and Misconduct Committee**

1 February 2013 to 31 March 2013

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The CMC fights crime and promotes integrity in Queensland

# Contents

Chairperson’s report.....	4
Crime .....	5
Achievements during the reporting period .....	5
Combating major crime .....	5
Organised crime.....	5
Proceeds of Crime.....	7
Criminal paedophilia.....	10
Hearings.....	11
Preventing major crime .....	13
Crime research and intelligence activity.....	13
Intelligence activity.....	15
Misconduct .....	27
Significant issues.....	28
Complaints.....	29
Queensland Police Service.....	30
QPS complaints.....	30
QPS Monitoring .....	30
Oversight of police-related deaths and ‘significant events’ .....	30
QPS audits.....	31
Investigating allegations of serious misconduct.....	31
Public Sector .....	32
Public sector complaints.....	32
Public sector monitoring.....	32
Investigating allegations of serious misconduct.....	32
Local government and government-owned corporations.....	32
Monitoring.....	32
Investigating allegations of serious misconduct.....	33
Misconduct prevention activities .....	33
Applied Research and Evaluation .....	34
Policing in Indigenous communities .....	34
Police ethics research program .....	35
Witness protection .....	37
Significant issues.....	37
Protecting Witnesses.....	37
Office of the Executive General Manager.....	39

Significant issues.....	39
Our people.....	40
CMC Establishment.....	40
Police Service Reviews.....	41
Communications.....	42
External Presentations.....	42
Website Statistics.....	44
Office of the General Counsel and the Legal Services Unit.....	45
General Counsel.....	45
Significant issues.....	45
Media.....	55
Matters of Interest.....	55
Media Releases.....	56
Media Interviews.....	56
Right to Information.....	57

# Chairperson's report

Three recent events have had major impacts on the Crime and Misconduct Commission (CMC).

The first of these was the decision of the CMC's Chairperson, Mr Ross Martin SC, to take leave from early March 2013 to progress a medical retirement. Mr Martin formally resigned on 3 April 2013, ending a long and distinguished career of public service to the people of Queensland.

The second was the Parliamentary Crime and Misconduct Committee's (PCMC) report No. 90 released on 5 April 2013 on its Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents.

As was said in evidence during the PCMC's public hearings, the CMC acknowledges the failure on its part to appropriately manage the historical Fitzgerald Inquiry records. The CMC also acknowledges that the journalists and others who lawfully accessed sensitive information during the relevant period have acted responsibly and not publishing material that might identify individuals.

The PCMC's report made 22 findings and 24 recommendations. The CMC will work with the PCMC on the specific recommendations for action and reform, as outlined in the report. Work has already started to progress many of those matters.

The third major event was the delivery of the report of the independent advisory panel (the Honourable Ian Callinan AC and Professor Nicholas Aroney), conducting the review of the *Crime and Misconduct Act 2001* and related matters. That report has made 17 recommendations for reform, some of which, if implemented, would impact substantially upon the current responsibilities and work of the CMC. It is noted that in tabling the panel's report on 18 April 2013 the Honourable the Attorney-General expressed the hope that *"the CMC and the wider community would view the panel's suggestions as nothing less than reforms that deserve full and fair consideration."* The CMC is presently reviewing the full report of the panel in order to afford such consideration to the specific recommendations made.

It is noted also that the Attorney advised, in tabling the Panel's report, that he proposed to invite the PCMC to offer its comments on the panel's recommendations. The CMC looks forward to engaging with the PCMC about the recommendations.

Although the above events were dominant ones in this reporting period, operational work continued. Further details of that work and its outcomes are contained in the following pages of this report.

Other significant issues worthy of specific mention are:

- In October 2012, the CMC established a Human Research Ethics framework to ensure that research conducted by the CMC that involves human subjects is conducted in a manner that conforms to the highest ethical and quality standards. The framework includes guidelines for designing research that adheres to the four core values that govern the relationship between researchers and research participants: research merit and integrity; justice; beneficence; and respect for human beings. The framework also specifies the research approval process, which includes ethical review by the CMC's independent Human Research Ethics Advisory Panel (HREAP). The role of independent advisers on the HREAP is to provide ethical advice on high risk and ethically sensitive human research projects proposed to be undertaken by the CMC.

Over this reporting period, administrative and security arrangements associated with the panel were finalised. The first meeting of the HREAP is scheduled for 2 May 2013.

- Senior officers of the CMC have met with the Commissioner of the Queensland Police Service (QPS) about the planned restructure of the QPS.

Warren Strange

Acting Chairperson

# Crime

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## Achievements during the reporting period

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- Our Crime hearings team held a total of 37 days of hearings involving 38 witnesses in support of QPS investigations of organised crime, serious crime and criminal paedophilia.
- A suspect was charged with murder at the end of an investigation in which the CMC had previously held extensive hearings.
- A man was sentenced to 27 months jail for committing perjury at a CMC hearing in a murder investigation.
- Our Cerberus team charged 3 alleged child sex offenders with a total of 8 offences.
- Our Proceeds of Crime team obtained 10 restraining orders over property valued in excess of \$1.83 million. Also, the State was the recipient of 9 forfeitures of property totalling \$1.82 million.
- We published a Current and Emerging Issues report entitled “Technology trends affecting organised crime in Queensland and implications for law enforcement”.

### How crime matters come to the CMC

Under legislation, we have a charter to investigate major crime, comprising organised crime, serious crime (involving offences punishable by at least 14 years imprisonment), criminal paedophilia and terrorism. As a referral-based investigative body, the CMC investigates major crime matters referred to it by the Crime Reference Committee. The Crime Reference Committee includes community representatives as well as the Assistant Commissioner, Crime (the Chair), the CMC Chairperson, the Commissioner of Police and the Commissioner for Children and Young People and Child Guardian.

As well as referring specific matters, the Crime Reference Committee has referred several general areas of major crime, which allows the CMC to investigate particular incidents of suspected criminal activity without a specific referral. This enables us to respond quickly to requests made by the QPS and other agencies, as well as to those issues identified through our own target development.

Currently, we have eight general referrals relating to outlaw motorcycle gang activity, established criminal networks, money laundering, terrorism, internet-related child sex offending, extra-familial child sex offending by networked or recidivist offenders, weapons, as well as a more recent referral relating to offences of extreme violence involving victims who are unborn, under the age of 16 years or over the age of 70 years, or in a position of particular vulnerability because of a physical disability or mental impairment.

## Combating major crime

### Organised crime

In combating organised crime, the CMC focuses on investigating the criminal identities and networks engaged in those illicit commodity markets that are of greatest harm to Queenslanders. In making these assessments we heavily rely upon our specialist strategic intelligence expertise. We also seek to devote our investigative resources to longer term investigations that are calculated to dismantle or more significantly disrupt such high risk networks. This vital part of our work is undertaken by multidisciplinary teams of police officers, lawyers, financial investigators and intelligence analysts, currently supplemented by a specialist evidentiary team.

Due to our focus on high risk networks and commodities, and our commitment to long term investigative strategies, our organised crime investigations are generally protracted in nature. Given the borderless nature of organised crime and the need to maximise the law enforcement response, our operations are often conducted jointly with other State and Commonwealth law enforcement agencies.

The typical life cycle of a CMC organised crime investigation is that after an initial target development phase guided by our Strategic Intelligence Unit, a full-blown tactical covert operation then commences in which a range of covert strategies may be used. The complexity of our organised crime investigations can entail that in any given operation this phase can last over twelve months. Upon “closure” of an operation, arrests are made followed by a range of overt investigations, often including the conduct of coercive hearings, and the compilation of electronic briefs of evidence for production in court. Simultaneously, our Proceeds of Crime team will in this period move to restrain the illegally derived property of targets with a view to its ultimate forfeiture to the State. Again, because of the complexity and length of an operation and the likelihood that numerous offenders, often to be counted in the dozens, may be charged, this final “brief preparation” phase may itself take many months.

### **Activity / Outcomes during the reporting period:**

During the reporting period the CMC’s Organised Crime team was engaged in 5 organised crime investigations, which target criminal activity involving drug trafficking by high risk crime groups and/or money laundering.

3 of these investigations were in the covert phase and no further information can be published at this time.

2 investigations, code-named Operations Storm and Lightning, were in the brief preparation/pre-trial phase. Both matters relate to organised criminal activity, both in Queensland and interstate, involving trafficking in drugs including heroin, amphetamine, cocaine and cannabis. The respective networks comprise persons predominantly (but not exclusively) of Albanian and Serbian descent.

<b>Operation LIGHTNING – commenced 29 August 2011 (previously Probe SPIDERBAIT commenced 17 December 2010)</b>	
Arrests	26
Charges Laid	186
Drug Seizures	\$614,550
Investigative Hearings (Days)	3
Notices to Produce	45
Warrants	10
Value of Assets Seized	\$341,050
Value of Assets Restrained	\$225,000
Witnesses Giving Evidence	2

<b>Operation STORM (previously Probe SNAKEBITE) – commenced 21 April 2011</b>	
Arrests	20
Charges Laid	59
Drug Seizures	\$29,175
Investigative Hearings (Days)	16
Notices to Produce	137
Warrants	18
Value of Assets Seized	\$159,540
Value of Assets Restrained	\$683,621.96
Witnesses Giving Evidence	13

## Proceeds of Crime

The CMC administers the non-conviction-based civil confiscation scheme under the *Criminal Proceeds Confiscation Act 2002* (CPCA). Under the Act, property is liable to be restrained if it belongs to, or is under the effective control of, someone who is suspected of having engaged in serious criminal activity in the past six years. Restrained property is liable to be forfeited unless a person proves, on the balance of probabilities, that it was lawfully acquired.

Our proceeds of crime staff work closely with the Queensland Police Service and the Director of Public Prosecutions in identifying and litigating proceeds of crime matters, as well as with the Public Trustee of Queensland, who is responsible for the property restrained and held by the state.

## Current Status

At the end of the current reporting period, our work in progress was as follows:-

- 90 current civil confiscation matters involving restrained property valued at \$64.397million; and
- 24 referred matters awaiting restraint involving property valued at \$8.538 million.

In this period we achieved the following results:-

- 10 restraining orders were obtained over property valued in excess of \$1.83 million.
- The State was the recipient of 9 forfeitures of property totalling \$1.82 million.

Settlement negotiations were being undertaken in 49 matters involving property valued at \$14.010 million. 2 matters were discontinued as litigation was no longer viable due to changed circumstances.

## Proceeds of crime results since 2002

Since the *Criminal Proceeds Confiscation Act 2002* came into operation, our team has been instrumental in delivering to the state:

- \$161.335m in assets restrained
- \$43.358m in assets forfeited.

## Recent Developments in the Barlow Matter

The CMC has restrained assets estimated to be valued at \$12,087,352 as a result of 9 separate restraining orders since December 2011. Orders were also made by the Supreme Court for restrained assets to be sold by the Public Trustee of Queensland with the net sale proceeds to be held in trust pending final determination of the confiscation proceedings. During the reporting period most items of restrained property were sold by the Public Trustee at a public auction.

The Proceeds of Crime Team is currently settling its material in preparation for trial in the confiscation proceedings. An application will be made for a proceeds assessment order and the making of a forfeiture order over all restrained property. Assets forfeited will be remitted to the State of Queensland.

## Strategic Issues

Our Proceeds of Crime Team has struggled to attract and retain experienced staff to meet its current workload of matters and deal with an increasing number of new requests for confiscation assistance. Unexplained wealth and serious drug offender legislation is currently before Parliament which cites the CMC as the administering body. These provisions will make further demands on the CMC's proceeds of crime capability.

## Comparative data of annual activity is as follows:

Year	Restraining Orders		Forfeitures	
	Number	Value	Number	Value
2002/2003	10	\$7.129M	1	\$0.018M
2003/2004	33	\$10.547M	2	\$0.768M
2004/2005	37	\$8.088M	15	\$1.622M
2005/2006	28	\$10.879M	25	\$1.999M
2006/2007	50	\$11.743M	26	\$4.245M
2007/2008	78	\$18.562M	27	\$4.675M
2008/2009	78	\$24.374M	23	\$3.304M
2009/2010	97	\$19.543M	42	\$5.568M
2010/2011	44	\$14.116M	48	\$9.325M
2011/2012	64	\$20.858M	36	\$7.007M
<b>2012/2013</b>	<b>41</b>	<b>\$15.511M</b>	<b>24</b>	<b>\$4.823M</b>
<b>TOTALS</b>	<b>560</b>	<b>\$161.335M</b>	<b>269</b>	<b>\$43.358M</b>

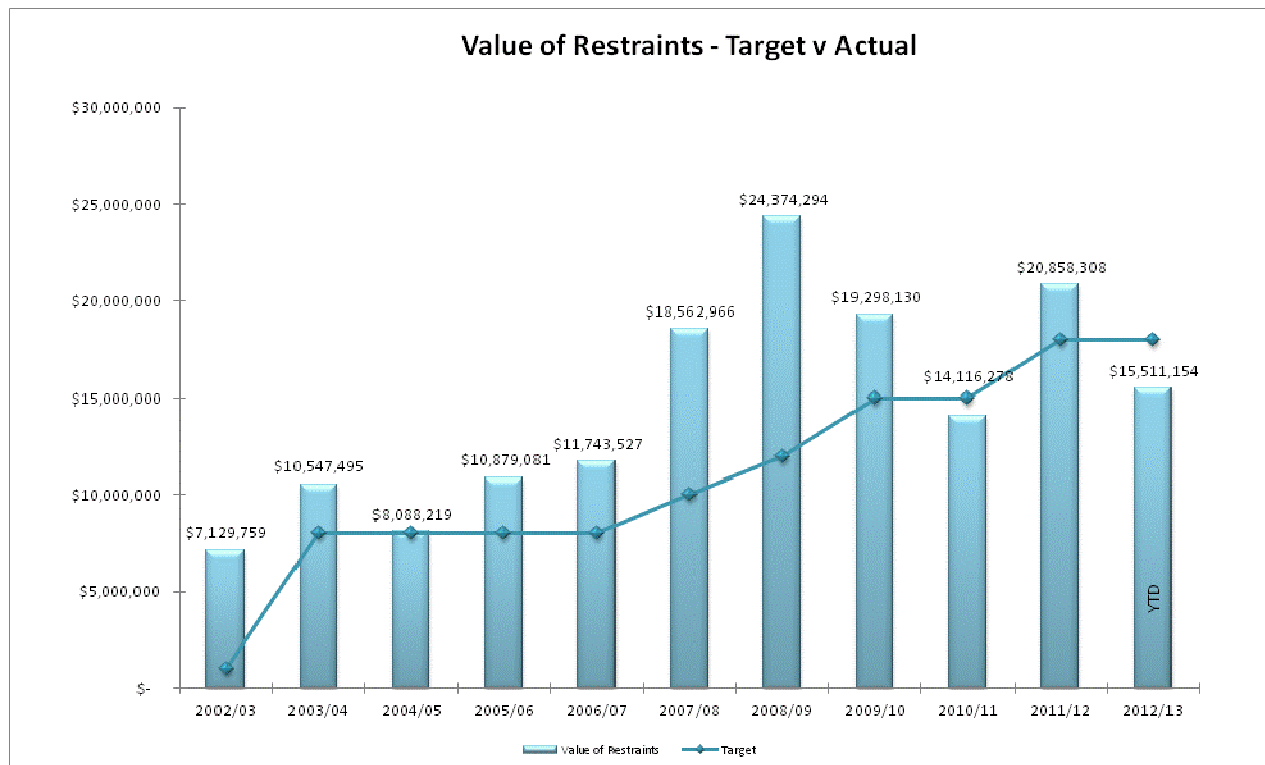
PERFORMANCE TARGETS				
Year	Restraining Orders		Forfeitures	
	Number	Value	Number	Value
2008/2009	60	\$12.00M	20	\$4.00M
2009/2010	60	\$15.00M	20	\$4.00M
2010/2011	60	\$15.00M	30	\$5.00M
2011/2012	75	\$18.00M	40	\$6.00M
2012/2013	75	\$18.00M	40	\$7.00M

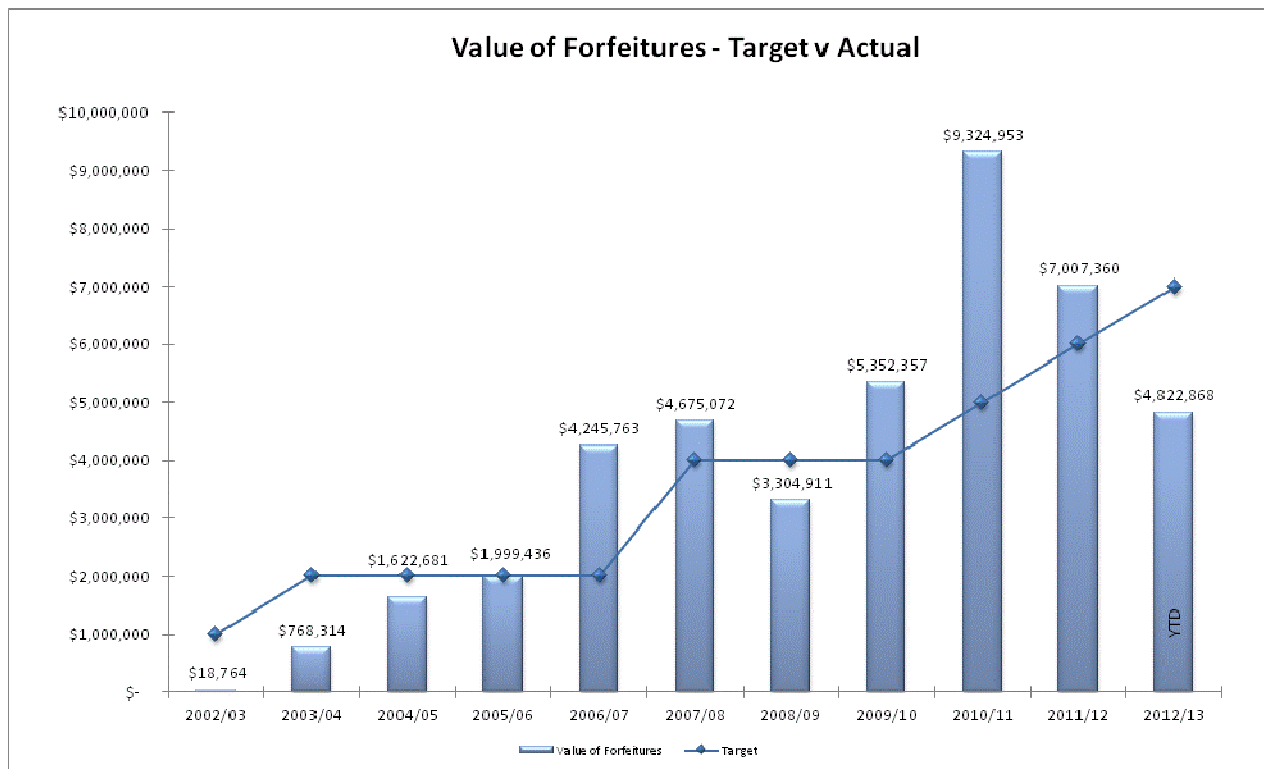


## Operational Measures

Year	Initiated		Finalised		Ongoing	
	Number of cases	Value of Restraints	Number of cases	Value of forfeitures	Number of cases	Value of Restraints
2002/2003	10	\$7.129M	9	\$2.241M	1	\$4.140M
2003/2004	33	\$10.547M	30	\$4.488M	3	\$1.268M
2004/2005	36	\$8.088M	34	\$3.339M	2	\$1.091M
2005/2006	28	\$10.879M	23	\$3.251M	3*	\$1.325M
2006/2007	36	\$11.743M	34	\$6.934M	2	\$0.726M
2007/2008	48	\$18.562M	42	\$4.836M	6	\$3.430M
2008/2009	50	\$24.374M	38	\$6.278M	12*	\$11.784M
2009/2010	53	\$19.543M	41	\$6.361M	12	\$5.558M
2010/2011	26	\$14.116M	17	\$4.151M	9	\$2.542M
2011/2012	31	\$20.858M	13	\$1.469M	18	\$17.542M
2012/2013	22	\$15.511M	2	\$0.252	20*	\$14.973M

\*One matter partially settled





## Criminal paedophilia

Although our jurisdiction relates to all child sex offending, our multidisciplinary Cerberus team dedicated to investigating criminal paedophilia focuses on internet-based offending and networked, recidivist extra-familial offending. This ensures that our work complements, rather than duplicates, the work of others.

Our team works closely with QPS Task Force Argos, regional Child Protection Investigation Units, Offices of the Commonwealth and Queensland Director of Public Prosecutions, and interstate and foreign law enforcement agencies. We place particular priority on disseminating any information that we uncover in our investigations to other appropriate jurisdictions worldwide to ensure that offenders may be identified in advance of any contact offending with children.

Our internet-based work is also closely supported by the CMC's Forensic Computing Unit. Officers from this Unit forensically examine any computer seized in the course of our investigations and it is typically the case that additional charges, often numbering in the hundreds, are then able to be laid against the suspects.

### Activity / Outcomes during the reporting period:

- As a result of our ongoing Internet-based investigations pursuant to our Atrax general referral we charged 3 alleged child sex offenders from Proserpine, Brisbane and the Gold Coast with a total of 8 offences under Queensland and Commonwealth law, including:-
  - Knowing Possession of Child Exploitation Material;
  - Using a Carriage Service to access Child Exploitation Material;
  - Using a Carriage Service to transmit Child Exploitation Material; and
  - Failure to comply with Child Protection Offender reporting conditions.

## Hearings

In addition to the investigations undertaken by the CMC's organised crime and criminal paedophilia teams, a substantial portion of our work relates to the conduct of hearings either in support of our own investigations or investigations referred from partner agencies — mainly the QPS. These investigations may fall within any category of major crime, although hearings are most frequently held in the areas of serious or organised crime, focussing on crimes such as murder, manslaughter or illegal drug activity.

A matter that does not fall within one of our existing general referrals may be specifically referred by our Crime Reference Committee, provided that a police investigation has not been, and is not likely to be, effective using ordinary police powers, and that it is in the public interest to make the referral.

We strive to provide this hearings service state-wide to ensure that regional QPS investigations receive a similar level of support to those in metropolitan areas.

Our Crime hearings team is led by the Director, Crime Hearings and Legal Services who is assisted by several lawyers and administrative officers. Hearings are held at the CMC's premises in Brisbane or in regional courthouses.

Our Crime hearings team held a total of 37 days of hearings in support of QPS investigations of organised crime, serious crime and criminal paedophilia. 38 witnesses were called to these hearings. Two presiding officers were available during much of the period, and hence concurrent hearings were frequently held.

### Case Study - Operation Kilo Zoom

In September 2012 QPS Task Force Argos charged a male person from the South Burnett with four offences in relation to the possession and distribution of Child Exploitation Material (CEM). Forensic examination of the suspect's computer revealed self-recorded videos depicting the offender filming unsuspecting adult female victims inside their homes. Police were able to identify 5 complainants who had been secretly filmed.

In October 2012 the suspect was interviewed and admitted having engaged in "peeping tom" style activity concerning a number of adult women. He admitted filming occupants from outside their homes or entering homes and engaging in unlawful sexual activity with sleeping women. He was then charged with 15 further offences that included Stalking, Burglary, Stealing, Sexual Assault and Burglary to commit Attempted Rape.

A further forensic examination of the suspect's computer identified similar offending in relation to a young girl, who could not be identified. However the suspect denied having engaged in any such activity in relation to children.

The suspect was called to a CMC Crime hearing in February 2013 in which he ultimately admitted having spied on a sleeping girl and provided sufficient information to enable the police to identify the child victim. Further charges were thus able to be laid against the suspect.

## Significant court outcomes from past hearings

### Witness pleads guilty to perjury charges

In March 2013 a 22 year old Sunnybank Hills man pleaded guilty in the Brisbane District Court to two counts of perjury arising from false evidence given by him at a CMC crime hearing held in June 2012.

The CMC's investigation related to the murder of another man at a Sunnybank shopping centre in April 2012. The witness falsely swore that he was not an occupant of a motor vehicle from which the fatal shot was fired, and that he was not the owner of a mobile phone used to arrange a drug deal with the deceased man.

The man was sentenced to 27 months imprisonment.

The joint QPS and CMC investigation is continuing.

### Hearings held during the reporting period

Hearings were held in support of a range of investigations, including the following:

- 3 murders suspected to have occurred in the context of organised criminal activity
- A murder of a baby
- A suspected unlawful killing involving a drug overdose
- Drug production and trafficking and money laundering
- "Peeping Tom" style child sexual offending (see case study for further details)

Hearings were held in Brisbane and Mackay. A total of 38 witnesses were called to give evidence to assist these major crime investigations.

### Persons jailed for Maryborough murder

During 2012 the CMC held extensive hearings in Brisbane and Gympie concerning the murder of a man at Maryborough in 2009, suspected of having been committed by two men and a woman, who then allegedly severed the deceased's penis.

Significant court outcomes occurred during the reporting period. One man was found guilty of murder and sentenced to life imprisonment. The second man pleaded guilty to manslaughter and was sentenced to 12 years imprisonment. Also, the Court of Appeal upheld a 9 year sentence in relation to the female co-accused, who had previously pleaded guilty to manslaughter.

### New Development in Leahy-Arnold Investigation

The CMC held hearings in Cairns in 2008 concerning the deaths of two women on the Atherton Tableland in 1991.

During the reporting period the State Coroner committed a man to trial for the murder of both women.

### New Major Crime Referrals

During the reporting period we received a new serious crime referral of a suspected murder on the Gold Coast earlier this year. Hearings are planned for late April and early May.

Another QPS organised crime investigation was referred to us for hearings assistance. It is being undertaken pursuant to the CMC's Weapons general referral and relates to the non-fatal shooting of a person in Brisbane in January 2013 by members of a suspected criminal network. Hearings are planned for May.

# Preventing major crime

In preventing crime, the CMC identifies possible sources of harm — such as drugs, weapons or online technologies that may facilitate criminal activity — and, as far as possible, acts to remove or minimise these threats.

We share information with the law enforcement community and, where possible, with the public, particularly those groups who may be vulnerable to exploitation. At the same time, our research findings enable us to recommend educative or preventative strategies to policy makers and legislators.

Listed below is some of our work in crime prevention in the reporting period:

- An abridged version of a law enforcement intelligence digest on an emerging issue concerning the diversion and misuse of Fentanyl, a powerful synthetic opiate analgesic, produced by the CMC in collaboration with the Australian Crime Commission in late 2012, was provided to the Intergovernmental Committee on Drugs and to Commonwealth and State health officials.
- We have completed the collection phase for a crime trends paper focussing on the growth of the drugs precursor market in Queensland. The paper will address the increase in organised crime groups importing non-controlled chemicals for use in the manufacture of amphetamine.
- We prepared the *Drug commodities and prices guide 2013* for police and law enforcement officers involved in drug investigations and/or education programs. The guide describes illicit substances commonly trafficked in Queensland, giving common street names, photographs and prices. It also includes information on new and emerging drugs on the market. Originally produced for internal use only, this publication is now more widely distributed because of strong demand and positive feedback from members of the QPS, and a new edition was clearly warranted.
- We are conducting 2 related research projects focussed upon child homicide and elderly homicide respectively. These projects are examining factors that make children and elderly persons vulnerable to homicide, offender typologies, investigative and prosecutorial challenges and opportunities for crime prevention.
- The Applied Research and Evaluation (ARE) Unit is conducting supplemental research, building on a 2012 law enforcement only paper examining Internet technologies, their use by criminal networks and potential vulnerabilities. The supplemental paper will assess the risk to buyers using online illicit marketplaces and opportunities for law enforcement to destabilise them.

## Crime research and intelligence activity

Much of the research done by our Applied Research and Evaluation Unit informs our decision-making or otherwise adds value to our work in fighting and preventing major crime.

### **Activity/Outcomes during the Reporting Period:**

#### **Legislative review of the *Child Protection (Offender Prohibition Order) Act 2008***

The CMC is sometimes required to explore and report on complex public policy issues that are referred to us by our Minister (the Attorney-General) under section 52(1)(c) of the CM Act or are undertaken as a requirement in legislation other than the CM Act. The CMC has a solid track record in undertaking this important work that provides government with an evidence base upon which to make legislative and policy decisions.

Recently, the CMC's ARE unit commenced a review of the *Child Protection (Offender Prohibition Order) Act 2008*. This legislation allows police officers to apply to a Magistrate for an order prohibiting certain previously convicted child sex offenders from engaging in certain conduct that poses a risk to the lives or sexual safety of one or more children, or of children generally.

As required by the Act, the review will commence in earnest as soon as practicable after June 2013 (five years after the Act commenced) and a report on the review will be tabled in Parliament.

Commencement date: March 2013  
Expected completion date: June 2014  
Status: On schedule

### **Vulnerable victims research program**

In January 2013 the CMC's Crime Reference Committee approved a general referral that enables rapid response to requests for assistance from law enforcement agencies for use of the CMC's special investigative powers (coercive hearings) in suspected homicide, manslaughter, grievous bodily harm and torture cases. The particular kinds of vulnerable victim recognised by the new referral (Cronos) are:

- unborn children
- children under the age of 16 years
- elderly persons over the age of 70 years
- people in a position of particular vulnerability because of a physical disability or mental impairment.

The ARE unit is conducting two projects that aim to increase the knowledge of CMC officers involved in relevant crime hearings.

### **Child homicide**

The project focuses on factors that make children vulnerable to homicide, offender typologies, investigative and prosecutorial challenges and opportunities for crime prevention.

Commencement date: March 2013  
Expected completion date: June 2013  
Status: On schedule

### **Elderly homicide**

The project focuses on factors that make elderly persons vulnerable to homicide, offender typologies, investigative and prosecutorial challenges and opportunities for crime prevention.

Commencement date: March 2013  
Expected completion date: June 2013  
Status: On schedule

### **Internet technologies research program**

Various technological developments allow people to use the internet with high levels of security and anonymity. The technologies provide an ideal environment for internet users to conduct legal or illegal activities with a low risk of being identified or located. Such illegal activities include online marketplaces for illicit goods and services.

In 2012, the CMC's ARE unit produced a law enforcement only paper that examined the capabilities of the technologies, the nature and scope of the criminal activities that are enabled by these technologies, vulnerabilities which might be exploited by the CMC and other law enforcement bodies, and the legislative and policy deficiencies that must be addressed in order to better respond to the technologies. The paper has been tabled and influential in shaping reform in various State, national and international law enforcement forums.

The ARE unit is currently working on a follow-up paper, which assesses the risk to buyers using online illicit marketplaces and opportunities for law enforcement to destabilise them.

Commencement date: October 2012  
Expected completion date: June 2013  
Status: On schedule

## **Paedophilia research program**

The ARE unit conducts research to support the work of police investigating criminal paedophilia and inform policy and law enforcement responses. Previous work has focused on a broad range of related issues, including disclosure and reporting of child sexual victimisation, the emergence of online paedophile networks, targeting and grooming of children for child sexual victimisation, prevention of child sexual victimisation. The CMC has also been called on by the government to conduct inquiries in this area, most notably the 2003 inquiry into the handling by the Department of Families and responsible ministers of allegations of abuse committed against foster children (Crime and Misconduct Commission (2004) *Protecting children: an inquiry into abuse of children in foster care*, CMC, Brisbane.)

Due to the current work of the Queensland Child Protection Commission of Inquiry, which was established to review progress of outcomes related to the Commission of Inquiry into Abuse of Children in Queensland Institutions and the Crime and Misconduct Commission Inquiry, the CMC has not scheduled new work in this area.

## **Illicit drugs research program**

The sale and distribution of illicit drugs is the most pervasive form of organised crime activity in Queensland. The ARE unit conducts research on illicit drug use to support the work of the CMC's Strategic Intelligence Unit and inform law enforcement and policy responses.

### **Monitoring illicit drug use patterns through waste water analysis**

The current focus of the illicit drugs program is on developing new methodologies to measure illicit drug use consumption. The CMC has entered into a collaborative arrangement with ENTOX, based at the University of Queensland, to generate estimates of illicit drug consumption through analysis of wastewater samples in Southeast Queensland. Information from this project was used in the CMC's 2012 Strategic Intelligence Assessment.

Commencement date:	June 2011
Expected completion date:	On-going monitoring and reporting
Status:	2012-13 Data available July 2013

## **Intelligence activity**

Our intelligence activity represents a key element of our fight against major crime. This work takes a number of forms and includes strategic assessment and reporting, target development and intelligence-related operational support.

The CMC's work in major crime is largely shaped by the activities of the Strategic Intelligence Unit (SIU). The SIU informs our understanding of organised crime markets, identifies the priority markets and syndicates and helps to ensure that resources are allocated towards those areas that pose the highest risk. In this way strategic intelligence products inform and drive our investigative activities. The SIU engages with a wide range of clients, stakeholders and partners to ensure the CMC maintains a strategic awareness of developments in the crime environment in Queensland and other jurisdictions.

In terms of target development, the SIU accesses information from a wide variety of sources to identify potential tactical opportunities. It assesses those opportunities according to risk, opportunity, resources and other existing operational activity to ensure our Crime resources are focused in the most appropriate areas. SIU target development has laid the foundations for numerous successful Crime investigations.

The SIU also plays a principal role in the management of human sources by the CMC. The use of appropriate individuals as sources of intelligence and information is an essential strategy in the investigation of organised crime. This strategy is instrumental in providing support to CMC investigations and informing our strategic products.

Another key component of our intelligence group is the Electronic Collections Unit. The ECU facilitates the collection of lawfully intercepted telecommunications by the various investigative areas of the CMC. The ECU ensures the legal and ethical use of TI material by the CMC. TI material forms a critical part of many of our organised crime briefs of evidence.

Finally the Intelligence Support Unit (ISU) ensures the legal and appropriate collection of the broad range of information necessary to support our major crime investigations, also thereby helping to provide complete and comprehensive briefs of evidence in support of criminal charges.

**Activity/outcomes during the reporting period:**

- As noted above, an abridged version of a law enforcement intelligence digest on an emerging issue concerning the diversion and misuse of Fentanyl (a powerful synthetic opiate analgesic) produced by the CMC in collaboration with the Australian Crime Commission in late 2012, was provided to the Intergovernmental Committee on Drugs and to Commonwealth and State health officials.
- During our 2012 Crime Markets Assessment we identified some significant crime trends that are the subject of series of specialist Current and Emerging Issues reports, to be published during 2013. The first of these papers, entitled “Technology trends affecting organised crime in Queensland and implications for law enforcement” was completed and disseminated to stakeholder law enforcement agencies. It is aimed at senior decision makers in law enforcement and seeks to stimulate discussion as to how law enforcement agencies can best respond to the impact of evolving technologies on organised crime investigations. Stakeholder feedback has been very positive.
- We are currently writing a crime trends paper focussing on on changes in organised crime behavior, particularly OMCG expansion / recruitment trends, the emergence of a new generation of OMCG members and possible increases in public acts of violence, particularly firearm related violence.
- We have completed the collection phase for a crime trends paper focussing on the growth of the Illicit precursor chemical market in Queensland. The paper will address trends in the illicit precursor market such as organised crime groups importing non-controlled chemicals for use in the manufacture of amphetamine type substances.
- An updated version of the CMC’s law enforcement only Drug Commodities and Prices Guide has been prepared and will soon be distributed to key stakeholders.
- The ECU continues to test and implement new telecommunication interception technologies and capabilities. These technologies will enhance our investigative capabilities.



STATISTICS RELATING TO THE COMMISSION'S USE OF ITS POWERS IN RELATION TO CRIME INVESTIGATION

Attendance Notices (s.95 of the Crime Commission Act 1997)

Year	Total Number of Notices Issued	Authorised by Chairperson/ Delegate	Immediate Attendance Notices [s.95(2)]	Yet to be Authorised / Cancelled / Vacated / Not Served
1997 - 1998	-	-	-	-
1998 - 1999	65	65	-	2
1999 - 2000	114	114	-	10
2000 - 2001	140	140	2	19
2001	103	103	-	12

Attendance Notices (s.82 and s.83 of the Crime and Misconduct Act 2001)

Year	Total Number of Notices Issued	Authorised by Chairperson/ Delegate	Immediate Attendance Notices [s.85]	Yet to be Authorised / Cancelled / Vacated / Not Served
2002	41	41	-	12
2002 - 2003	184	184	-	33
2003 - 2004	96	96	-	10
2004 - 2005	53	53	1	12
2005 - 2006	123	123	-	12
2006 - 2007	117	117	1	39+*1
2007 - 2008	222	222	-	25
2008-2009	243	243	-	29 not served 6 vacated
2009 - 2010	164	164	-	35 not served
2010-2011	140	*139	-	12 not served 9 vacated 6 withdrawn 2 not issued
2011-2012	183	183	-	7 vacated 26 not served

\* Interstate witness – to be served (2006-2007)

\* 1 attendance notice number issued but not signed (2010-2011)

**Attendance Notices (s.82; s.83 and s.85 of the Crime and Misconduct Commission Act 2001)**

<b>Month 2012-2013</b>	<b>Total Number of Notices Issued</b>	<b>Authorised by Chairperson</b>	<b>Authorised by Chairperson's Delegate</b>	<b>Immediate Attendance Notices [s.85]</b>	<b>Yet to be Authorised / Cancelled / Vacated / Not Served</b>
July	20	-	20	-	4 not served
August	24	-	24	-	2 not served
September	22	-	22	-	1 not served
October	16	-	16	-	-
November	24	-	24	-	1 not served
December	12	-	12	-	-
January	4	-	4	-	1 not served
<b>February</b>	<b>15</b>	-	<b>15</b>	-	<b>2 not served</b>
<b>March</b>	<b>32</b>	-	<b>32</b>	-	<b>4 not served</b>
<b>2012-2013 Total</b>	<b>169</b>	-	<b>169</b>	-	<b>15 not served</b>

**Investigative Hearings (s.100 of the Crime Commission Act 1997)**

<b>Year</b>	<b>Organised Crime (no. of days)</b>	<b>Major/Serious Crime (no. of days)</b>	<b>Criminal Paedophilia (no. of days)</b>	<b>Total Number of Days Hearings Held</b>
1997 - 1998	-	-	-	-
1998 - 1999	26	15	4	45
1999 - 2000	27	36	5	68
2000 - 2001	29	52	-	81
2001	30	18	3	51

Note: Figures for 1998 – 1999 are approximate only.

**Investigative Hearings (s.176 of the Crime and Misconduct Commission Act 2001)**

<b>Year</b>	<b>Organised Crime (no. of days)</b>	<b>Major/Serious Crime (no. of days)</b>	<b>Criminal Paedophilia (no. of days)</b>	<b>Counter Terrorism (no. of days)</b>	<b>Total Number of Days Hearings Held</b>
2002	15	9	-	-	24
2002 - 2003	33	53	6	-	92
2003 - 2004	34	53	-	-	87
2004 - 2005	11	18	6	-	35
2005 - 2006	26	75	3	-	104
2006 - 2007	47	30	-	2	79
2007 - 2008	80	62	8	-	150
2008-2009	65	90	2	-	157
2009-2010	57	101	4	-	162
2010-2011	51	62	1	-	114
2011-2012	71	74	-	-	145

**Investigative Hearings (s.176 of the Crime and Misconduct Act 2001)**

<b>Month 2012-2013</b>	<b>Organised Crime (no. of days)</b>	<b>Major/Serious Crime (no. of days)</b>	<b>Criminal Paedophilia (no. of days)</b>	<b>Counter Terrorism (no. of days)</b>	<b>Total Number of Days Hearings Held</b>
July	19	3	-	-	22
August	14	5	-	-	19
September	13	12	-	-	25
October	3	9	-	-	12
November	4	13	-	-	17
December	-	13	-	-	13
January	4	3	1	-	8
<b>February</b>	-	12	1	-	13
<b>March</b>	2	22	-	-	24
<b>2012-2013 Total</b>	<b>59</b>	<b>92</b>	<b>2</b>		<b>153</b>

**Notices to Produce (s.93 and s.73 of the Crime Commission Act 1997)**

Year	Total Number of Notices Issued	Number of Notices Served	Total Number of Notices to a Unit of Public Administration
1997 - 1998	2	-	-
1998 - 1999	286	-	6
1999 - 2000	182	*169	3
2000 - 2001	295	*288	-
2001	111	*110	-

**Notices to Produce (s.72, s.74 and s.74A of the Crime and Misconduct Act 2001)**

Year	Total Number of Notices Issued	Number of Notices Served	Total Number of Notices to a Unit of Public Administration
2002	73	*70	1
2002 - 2003	201	*185	1
2003 - 2004	169	*160	4 (incl 2 cancelled)
2004 - 2005	378	*375	5
2005 - 2006	411	*398	3
2006 - 2007	483	*468	2
2007- 2008	426	*418	11
2008-2009	618	*603	5
2009-2010	461	*447	2
2010-2011	416	*406	11
2011-2012	529	*519	6

\* 116 cancelled

**Notices to Produce (s72, s.74 and s.74A of the Crime and Misconduct Act 2001)**

<b>Month 2012-2013</b>	<b>Total Number of Notices Issued</b>	<b>Number of Notices Served</b>	<b>Total Number of Notices to a Unit of Public Administration</b>
July	52	*51	-
August	47	*46	-
September	51	51	1
October	48	47	-
November	48	48	-
December	31	30	-
January	61	61	-
<b>February</b>	<b>28</b>	<b>28</b>	<b>1</b>
<b>March</b>	<b>18</b>	<b>18</b>	<b>-</b>
<b>2012-2013 Total</b>	<b>384</b>	<b>380</b>	<b>2</b>

\*4 cancelled

**Search Warrants (s.74 of the Crime Commission Act 1997)  
(and other Acts)**

<b>Year</b>	<b>Total Number of Warrants Issued</b>	<b>Crime Commission Act (s.74)</b>	<b>Police Powers and Responsibilities Act (s.151)</b>
1997 - 1998	4	-	4
1998 - 1999	8	2	6
1999 - 2000	-	-	-
2000 - 2001	3	-	3
2001	-	-	-

**Search Warrants (s.87 of the *Crime and Misconduct Act 2001*)  
(and other Acts)**

<b>Year</b>	<b>Total Number of Warrants Issued</b>	<b>Crime and Misconduct Act (s.87)</b>	<b>Police Powers and Responsibilities Act (s.151)</b>
2002	-	-	-
2002 - 2003	21	-	21
2003 - 2004	3	-	3
2004 - 2005	13	1	12
2005 - 2006	24	-	24
2006 - 2007	19	-	19
2007 - 2008	23	-	23
2008-2009	8	-	8
2009-2010	21	-	21
2010-2011	10	-	10
2011-2012	16	-	16

\*1 cancelled in 2008-2009

\*1 cancelled in 2010-2011

**Overt/Search Warrants (s.87 of the Crime and Misconduct Act 2001)**  
**(and other Acts)**

<b>Month 2012-2013</b>	<b>Total Number of Warrants Issued</b>	<b>Crime and Misconduct Act (s.87)</b>	<b>Police Powers and Responsibilities Act (s.151)</b>
July	2	-	2
August	-	-	-
September	1	-	1
October	1	-	1
November	1	-	1
December	-	-	-
January	-	-	-
<b>February</b>	-	-	-
<b>March</b>	<b>2</b>	-	<b>2</b>
<b>2012-2013 Total</b>	<b>7</b>	-	<b>7</b>

**Arrest Warrants (s.115 of the Crime Commission Act 1997)**  
**(and other Acts)**

<b>Year</b>	<b>Total Number of Warrants Issued</b>	<b>Crime Commission Act [s.115(4)]</b>	<b>Police Powers and Responsibilities Act (s.371)</b>
1997 - 1998	-	-	-
1998 - 1999	-	-	-
1999 - 2000	-	-	-
2000 - 2001	2	1	1
2001	-	-	-

**Arrest Warrants (s.168 of the Crime and Misconduct Act 2001)**  
**(and other Acts)**

<b>Year</b>	<b>Total Number of Warrants Issued</b>	<b>Crime &amp; Misconduct Act [s.168]</b>	<b>Police Powers and Responsibilities Act (s.371)</b>
2002	-	-	-
2002 - 2003	-	-	-
2003 - 2004	2	2	-
2004 - 2005	1	1	-
2005 - 2006	-	-	-
2006 - 2007	-	-	-
2007 - 2008	-	-	-
2008-2009	1	-	1
2009-2010	-	-	-
2010-2011	-	-	-
2011-2012	-	-	-

**Arrest Warrants (s.168 of the Crime and Misconduct Act 2001)**  
**(and other Acts)**

<b>Month 2011-2012</b>	<b>Total Number of Warrants Issued</b>	<b>Crime and Misconduct Act [s.168]</b>	<b>Police Powers and Responsibilities Act (s.371)</b>
July	-	-	-
August	-	-	-
September	-	-	-
October	-	-	-
November	-	-	-
December	-	-	-
January	-	-	-
<b>February</b>	-	-	-
<b>March</b>	-	-	-
<b>2012-2013 Total</b>	-	-	-



**Covert Search Warrants (s.88 of the *Crime Commission Act 1997*)  
(and other Acts)**

<b>Year</b>	<b>Total Number of Covert Search Warrants Issued</b>	<b>Crime Commission Act (s.88)</b>	<b>Police Powers and Responsibilities Act (s.215)</b>
1997 - 1998	1	1	-
1998 - 1999	4	3	1
1999 - 2000	4	3	1
2000 - 2001	3	1	2
2001	*1	*1	-

Note: \* One not proceeded with due to operational reasons

**Covert Search Warrants (s.151 of the *Crime and Misconduct Act 2001*)  
(and other Acts)<sup>1</sup>**

<b>Year</b>	<b>Total Number of Covert Search Warrants Issued</b>	<b>Crime and Misconduct Act (s.151)</b>	<b>Police Powers and Responsibilities Act (s.215)</b>
2002	4	4	-
2002 - 2003	6	*6	-
2003 - 2004	4	4	-
2004 - 2005	9	9	-
2005 - 2006	9	**6	3
2006 - 2007	1	-	1
2007 - 2008	2	2	-
2008-2009	1	-	1
2009-2010	3	3	-
2010-2011	2	2	-
2011-2012	-	-	-

\*1 not executed

\*\*1 cancelled

**Listening Device Applications / Surveillance Warrants**

<sup>1</sup> For operational security reasons, statistics relating to the number of covert search warrants issued on a monthly basis during the reporting period are not provided.

**(s.82 of the Crime Commission Act 1997)**  
**(and other Acts)**

<b>Year</b>	<b>Total Number of Applications</b>	<b>Crime Commission Act (s.82)</b>	<b>Police Powers and Responsibilities Act (s.330)</b>
1997 - 1998	3	1	2
1998 - 1999	*5	-	*5
1999 - 2000	9	-	9
2000 - 2001	37	32	5
2001	**3	-	**3

Note: \* One device not installed.

\*\* Two devices not installed.

**Listening Device Applications / Surveillance Warrants**  
**(s.124 of the Crime and Misconduct Act 2001)**  
**(and other Acts)<sup>2</sup>**

<b>Year</b>	<b>Total Number of Applications</b>	<b>Crime and Misconduct Act (s.124)</b>	<b>Police Powers and Responsibilities Act (s.330)</b>
2002	7	7	-
2002 - 2003	15	*15	-
2003 - 2004	16	16	-
2004 - 2005	31	31	-
2005 - 2006	31	28	3
2006 - 2007	28	-	28
2007 - 2008	10	-	10
2008 - 2009	21	-	*21
2009-2010	11	-	11
2010-2011	4	-	4
2011-2012	19	-	19

1 application not issued by Judge in 2002-2003

1 cancelled in 2008-2009

<sup>2</sup> For operational security reasons, statistics relating to the number of listening device/surveillance warrants issued on a monthly basis during the reporting period are not provided.

# Misconduct

## Our role and jurisdiction

The CMC's role is to promote a trustworthy public sector in Queensland and reduce the incidence of misconduct. Our wide-ranging jurisdiction includes all state government departments, the Queensland Police Service, local governments, public sector agencies and statutory bodies, government-owned corporations, universities, prisons, courts, tribunals and elected officials.

The CMC is not a court, nor can it discipline anyone as a result of a misconduct investigation. Police officers seconded to the CMC can, in some cases, instigate criminal charges and the CMC can also refer matters to; the Director of Public Prosecutions with a view to criminal prosecution, the Queensland Civil and Administrative Tribunal (QCAT) to consider disciplinary charges of official misconduct, and the CEO of an agency to consider disciplinary action.

Our misconduct prevention and capacity-building activities help agencies reduce their risk of corruption by improving their internal controls, accountability and the integrity of their operations.

## Integrity Services - Assessment

Integrity Services receives and assesses all complaints alleging misconduct in public agencies. The number of complaints the CMC receives means that the CMC cannot investigate all matters. Our legislation also requires that, subject to consideration of the public interest and the capacity of a public sector agency, action to prevent and deal with misconduct should generally happen within that agency. Most complaints can be dealt with by the relevant agency investigating the matter or taking managerial action, in some cases subject to our oversight. We refer most complaints to agencies for handling and monitor how they deal with them. Our monitoring can include:

- overseeing an investigation while it is taking place (and helping to interview witnesses if necessary)
- reviewing an agency's finalised investigation report before any disciplinary or other managerial action is taken, to ensure the matter has been dealt with properly and that the suggested outcomes are warranted
- after a matter has been finalised, reviewing how an agency dealt with a complaint
- auditing how an agency has dealt with a general class of complaints (e.g. reprisals against whistleblowers, police use of illicit drugs or excessive force)
- auditing an agency's overall integrity framework, including its policies and systems for complaints management
- recording outcome data for all referred matters to inform analysis of complaint trends and areas that may require closer monitoring
- reviewing the outcomes of all misconduct disciplinary hearings conducted by the QPS, and exercising our review rights where necessary.

## Misconduct Operations - Investigations

Misconduct Investigations undertaken by the CMC are progressed by a unit called Misconduct Operations. CMC misconduct investigations are conducted by multidisciplinary teams comprising police, civilian investigators, lawyers, intelligence analysts, financial investigators and prevention officers. To make the best use of our limited resources, we investigate only the most serious or sensitive allegations of misconduct. These include suspected fraud within government agencies, police corruption, prevalent or systemic misconduct and matters of significant public interest. We also conduct cooperative investigations with agencies by making available the expertise and experience of our investigators, lawyers, forensic accountants and intelligence officers and by using our special investigation and police powers.

Specific investigations that are being undertaken in Misconduct Operations are not reported on publicly. There would be a significant risk of either compromising a current investigation or causing reputational damage to those persons who are under investigation. Discussing the progress of an investigation also carries with it a risk that persons who are assisting by confidentially providing information to the CMC would be identified.

As at 31 March 2013, Misconduct Operations has 39 matters under investigation (including 10 cooperative investigations). The full breakdown for the 39 investigations outstanding, and a guide as to the duration of the investigation, is as follows:

5	(13%)	< 3 months
8	(20%)	3-6 months
9	(23%)	6-9 months
10	(26%)	9-12 months
7	(18%)	> 12 months
39		

## Significant issues

### Review of the Crime and Misconduct Act 2001

During the reporting period Misconduct continued to contribute significant resources for the purpose of responding to correspondence from the advisory panel headed by former High Court Justice, the Honourable Ian Callinan AC and University of Queensland Professor Nicholas Aroney.

### University of Queensland Quality Review

As a result of the CMC's dealings with complaints of suspected official misconduct at senior levels within the University of Queensland and resulting concerns about the integrity of the University's admissions and complaints handling procedures, the CMC announced in January 2012 that it would conduct a quality review of the University of Queensland's management of official misconduct matters.

The CMC envisaged the quality review would assist in restoring public confidence in the University's ability to prevent and deal with official misconduct. A draft review report was provided to the University in July 2012, and a response has been provided by the University. The CMC has given consideration to the University's response. The CMC is in the process of finalising its report on this quality review. It will be finalised and forwarded to the University within the next reporting period.

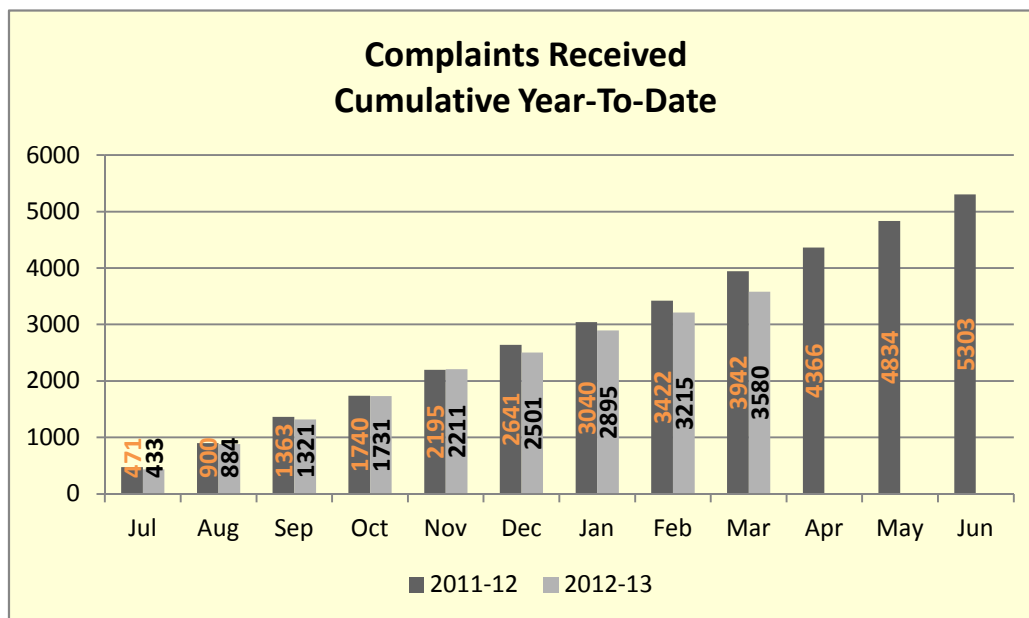
### Indigenous Engagement

The CMC has for some time taken steps to improve our engagement with Indigenous complainants. In its *Strategic Plan 2011 – 2015*, the CMC committed to developing an Integrated Indigenous Engagement Strategy (IES). The overarching goal of the IES is to set out strategies to strengthen the CMC's relationships with Aboriginal and Torres Strait Islander communities, organisations and individuals; and to improve the delivery of core operational services to Indigenous stakeholders.

An IES was developed along with an accompanying Action Plan which details a range of specific projects and activities across the agency. Both the IES and Action Plan were endorsed by the Commission on 25 May 2012 and the IES was launched in NAIDOC week in July 2012.

## Complaints

Since 1 July 2012, the CMC has received 3580 complaints. This is a 10% decrease when compared to the same period in 2011-12. This decrease is mainly in relation to complaints received about public sector employees.



The 3580 complaints received to date contain a total of 8135 allegations of misconduct. (A complaint may contain multiple allegations.) Of these allegations:

- 49 per cent (4022) related to police
- 40 per cent (3230) related to public sector agencies (including Government-Owned Corporations)
- 10 per cent (797) related to local government
- 1 per cent (86) related to other agencies (mainly involving members of parliament).

The CMC has assessed 3583<sup>3</sup> complaints for the financial year to date:

- 2902 ( 81%) were referred to the appropriate agency to deal with, subject to the CMC's monitoring
- 47 (1%) were retained for investigation by the CMC (including investigations conducted cooperatively with agencies)
- 634 (18%) were assessed as requiring no further action.

<sup>3</sup> The number of complaints assessed differs slightly from the number received because somewhat different time periods apply.

# Queensland Police Service

## QPS complaints

For the financial year (to date), the CMC has received 1717 complaints containing 4022 allegations against police. The number of complaints received is 1 per cent lower than the same period in 2011–12. The 4022 allegations against police are about 49 per cent of total allegations received by the CMC.

Where possible, the CMC and the QPS record whether complaints about police involve incidents with Indigenous people. Indigenous complaints remained steady for the year, comprising 8 per cent of the total complaints made against police.

## QPS Monitoring

The CMC monitors the QPS's handling of complaints through various mechanisms. These include oversight of the investigation of serious incidents involving police, described below; settling initial investigative steps to be taken by the QPS in a matter; overseeing an investigation while it is taking place; and reviewing interim or final reports as an investigation progresses and before any disciplinary or other action is taken. We may also audit the way the QPS has dealt with a general class of complaints or dealt with particular areas of focus.

## Oversight of police-related deaths and 'significant events'

The CMC is informed of all police-related deaths and also of 'significant events' involving police. It may elect to attend an incident if there is concern regarding the public interest (for example, where a police officer has shot at someone, regardless of whether there have been injuries or deaths).

For the financial year (to date), the CMC has responded to eight (8) police incidents across the state. This included traffic incidents and suicides. The CMC attended each incident as part of its oversight function to:

- provide independent oversight of the QPS investigative response
- assess the probity and sufficiency of the initial investigation
- determine, together with the State Coroner, if there is a likelihood of any official misconduct or police misconduct, such as would warrant the CMC's further involvement, including assuming control of an investigation if that is considered necessary.

Where the CMC has deemed further investigation warranted, these matters have been referred accordingly.

## Reviews of matters dealt with by the QPS

This financial year (to date), 85 police matters have been the subject of close monitoring through a case review, reflecting our heightened focus on serious misconduct. The CMC was satisfied with the way in which the QPS dealt with matters in 93 per cent of the cases, which is, to date, an improvement compared to last year.

Other, more specific concerns identified by the CMC have been referred back to the QPS to be addressed through either individual case management or broader training programs, as appropriate. Some of the CMC's concerns related to conflicts of interests and unexplained delays in completing inquiries.

## Review of police discharge of firearms

As a result of a rise in the number of incidents of police discharge of their firearms, the CMC commenced a review of police shootings that have occurred between late 2011 and June 2012. The review has involved the examination of a number of incidents where police officers discharged firearms when faced with motor vehicles that were stolen and/or drivers of such vehicles who refused to yield to police directions.

A draft report has now been completed, with a number of proposed recommendations. The draft report is to be provided to our stakeholders for comment after it has been tabled for consideration by the Commission.

## **QPS audits**

The CMC has commenced an audit and review of the way the QPS deals with incidents of excessive force in police watch-houses and similar prisoner holding areas.

It is anticipated that the audit will identify the associated risks in relation to prisoners in a controlled environment. The audit will also identify opportunities to reduce or remove the risks of misconduct via changes to QPS risk management processes.

## **QCAT referrals**

In the reporting period 1 February to 31 March 2013, the CMC examined 12 'reviewable decisions'. These are decisions the QPS makes in internal disciplinary proceedings against police officers for misconduct. Seven (7) of the decisions related to, or revolved around, police officers accessing (and in some cases using) confidential police information without authority. Sanctions ranged from reprimands to a salary reduction of three pay points. Our purpose in reviewing these decisions is to ensure that the findings were justified and that the sanctions imposed (where relevant) were proportionate to the facts disclosed.

During this period the CMC made application to the QCAT to review two (2) cases where it was considered the findings were inconsistent with the relevant law and facts, or the sanctions were disproportionate to the disclosed facts.

One application relates to a prescribed officer's decision not to take disciplinary action for police misconduct against a police officer. A court had already convicted the subject police officer for having unlawfully assaulted a man in the Queen Street Brisbane Mall in 2006. In this case, the CMC is asking QCAT to rule that the decision (not to take disciplinary action) is a 'reviewable decision' under section 219BA(1) of the Crime and Misconduct Act 2001.

The second QCAT application relates to a prescribed officer's decision not to make a disciplinary declaration<sup>4</sup> against a former police officer, where the decision maker found the former police officer had intentionally damaged and then discarded video evidence (of a police pursuit), which was relevant to a coronial investigation of a motorcyclist's death.

## **QCAT Appeal**

During the reporting period the CMC has also appealed one QCAT decision.

The CMC's QCAT appeal related to the loss of a vessel (the Malu Sara) and five lives in the Torres Strait in 2005. In the first instance, QCAT dismissed the CMC's review of a prescribed officer's decision to impose a suspended demotion on the police officer who had coordinated the search and rescue mission. On appeal, QCAT found that a suspended sanction was inappropriate in this case.

The subject police officer has recently sought leave to appeal that decision.

## **Investigating allegations of serious misconduct**

The CMC may investigate police misconduct independently, but in some situations it may choose to conduct joint investigations with the QPS. Joint investigations allow QPS ethical standards investigators access to the CMC's unique powers, as well as our in-house expertise and specialised services in intelligence, financial analysis, forensic computing, research and prevention. The CMC can also assume responsibility for an investigation under the CM Act if the public interest requires — for instance, when information about more serious misconduct arises during an investigation, or when an investigation by an agency is not being conducted effectively.

This year (to date), the CMC has conducted 32 investigations covering 120 allegations alleging official misconduct by QPS officers, which includes 19 joint investigations. The most common types of allegations investigated were Official Misconduct (duty failures) (23%) and assault/excessive force (14%). As a result of investigations conducted between 1 July 2012 and 31 March 2013, we recommended that 30 disciplinary charges be instituted against 18 officers.

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<sup>4</sup> Even though a person may have resigned as a public sector officer, we may still refer the matter to the public sector agency that employed the person to consider whether it is appropriate to make a disciplinary declaration against the officer. This does not affect the way the person left the organisation or their entitlements. However, the declaration, with its finding of misconduct, will remain on their file, and this will be taken into account should the person seek future re-employment in the public sector.

# Public Sector

## Public sector complaints

For this financial year (to date), the CMC has received 1403 complaints containing 3230 allegations against public sector employees. The number of complaints received is 25 per cent lower than the same period in 2011–12. The 3230 allegations against public sector employees is about 40 per cent of total allegations received by the CMC.

## Public sector monitoring

For this financial year (to date), the CMC has reviewed a total of 141 complaints dealt with by public sector agencies. The CMC was satisfied with the way in which agencies dealt with these matters in 97 per cent of cases, compared with 96 per cent in the previous year. A range of concerns were identified in 3% of matters across all agencies, including delays in finalising investigations, failure to provide adequate investigation reports for review, failure to interview (and record interviews with) all relevant witnesses, and failure to identify and manage systemic issues.

## Investigating allegations of serious misconduct

For the period 1 July 2012 to 31 March 2013, the CMC conducted 23 investigations into 139 allegations of official misconduct in the public sector. While all matters investigated involved serious allegations of misconduct, some matters were of a particularly high profile and public interest.

As a result of our investigations conducted between 1 July 2012 and 31 March 2013, we have recommended 30 disciplinary charges involving 13 officers.

# Local government and government-owned corporations

For the period 1 July 2012 to 31 March 2013 we received 330 complaints of official misconduct involving local governments, a decrease of 4 per cent for the same period in 2011–12. These complaints contained 797 allegations, or 10 per cent of all allegations made to the CMC. Of these:

- 6 per cent involved local governments
- 20 per cent were against councillors
- 74 per cent were against local government employees.

We also received 125 complaints of official misconduct involving government-owned corporations. This is comparable to the same time last year.

## Monitoring

Our assessment and monitoring work is directed to continuously improving the capacity of local governments and government-owned corporations to reduce the incidence of misconduct internally. Due to its close contact with the local community, the CMC recognises that local government has unique risks regarding misconduct.

## Reviews of complaints

For the financial year to date, the CMC has reviewed 41 matters dealt with by local governments and government-owned corporations. A further 86 interim reports were provided for review. The CMC was satisfied with how these matters were dealt with in 59 per cent of matters. A substantial proportion of unsatisfactory reviews related to one council only. The CMC's concerns are not considered to have impacted upon investigation outcomes. Rather, they related to the content of investigation reports which were not in the form recommended by our guidelines for dealing with official misconduct ("Facing the Facts"). This led to inefficiencies and limited the effectiveness of some of our reviews. The problems arose during a period of change in the council's governance structures and personnel. We are satisfied that the new council arrangements are contributing to improving efficiency in our monitoring of its investigations.



## Investigating allegations of serious misconduct

This year (to date), the CMC has conducted seven (7) investigations covering 25 allegations alleging official misconduct by officers of local governments and government-owned corporations. The most common types of allegations investigated were corruption and favouritism (32%) and allegations related to the improper gathering of evidence (24%). As a result of our investigations conducted between 1 July 2012 and 31 March 2013, we recommended that four (4) criminal charges be instituted against two (2) persons.

# Misconduct prevention activities

## Misconduct prevention and anti-corruption activities

Under its legislation the CMC has a function to help prevent misconduct.

Prevention officers are attached to investigation teams, enabling ongoing reviews of the systems, policies, procedures and work practices relevant to the matter under investigation. Prevention officers focus on the systemic causes of misconduct, rather than the individual who has been involved, to identify weaknesses and gaps and make recommendations to reduce opportunities for misconduct within the agency and, where relevant, across the public sector.

Agencies have responded to 493 of our recommendations since 1 July 2012. Of these 493, they accepted 94 per cent (466).

## Training and presentations

The CMC has been identified by agencies as a valuable resource in helping to strengthen their integrity systems, resulting in invitations by agencies to provide tailored training and support. Training and presentations provided in the period were conducted on many topics, including the following:

- One Lunchbox Seminar was presented in this period to a combined audience of 71 public sector employees, on the topic “Back to Basics: What is Misconduct?” The voice supported PowerPoint presentations for this session are in the process of being recorded for future publishing on the CMC website, which will make this resource available to all people employed state-wide in public sector entities.
- We attended at the Local Government LocalBuy conference in Brisbane and presented on misconduct risks in procurement.
- We presented to approximately 30 staff from the Corporate Services and Human Resources section of a local government on misconduct risks.
- The Principal Advisor, Misconduct Prevention participated in the Queensland Treasury and Trade Fraud Awareness Day and delivered a session titled “CMC Guide for dealing with suspected official misconduct in Queensland public sector agencies” to approximately 400 attendees from a range of public service agencies.
- The Advisor, Misconduct Prevention presented to 28 Media and Communications staff at a state agency on the topic “Social Media and public officials”.
- The two CMC Indigenous Liaison Officers facilitated two QPS Cultural Appreciation Information sessions at the QPS Academy, for approximately 140 QPS trainees.

All misconduct prevention publications are available on our website [www.cmc.qld.gov.au/prevention](http://www.cmc.qld.gov.au/prevention).

## Links with overseas integrity agencies

Each year the CMC is visited by delegations and individuals from other countries keen to draw upon the experience the CMC has gained in over twenty years of investigating and preventing public sector misconduct, fraud and financial crime.

One international delegation was hosted by the CMC in this reporting period. This 16 person delegation consisted of highly ranked officials from a range of Chinese national and provincial corruption prevention agencies, and included: the Director General Commissioner, the General Office of the National Bureau of Corruption Prevention; Deputy Directors General of provincial corruption prevention or supervision bureaus and departments from the provinces of Mongolia, Jiangsu, Shandong, Hunan, Chongqing, Beijing, and a Director and Senior Economist, Credit Information System Bureau of the People's Bank of China.

## Applied Research and Evaluation

### Police use of force research program

One of the defining features of policing is the lawful authority to apply force when the circumstances call for it. Police have a range of force options available to them and there is significant public interest in ensuring police use their powers appropriately and that any use of force is reasonable and proportionate. The CMC's Applied Research and Evaluation unit has conducted a large body of work that has influenced legislation and policy in areas such as police pursuits, taser use and use of Oleoresin Capsicum (OC) spray.

### Multiple and prolonged Taser deployments

Multiple and prolonged Taser deployments are a significant and controversial use of force. A multiple discharge occurs when more than one standard five-second Taser cycle is targeted at a person during an incident. A prolonged discharge occurs when the Taser is applied for longer than five continuous seconds. The CMC has consistently raised concerns about the high proportion of multiple and prolonged Taser deployments.

This project examines multiple and prolonged Taser deployments by the QPS since the introduction of the current Taser policy. The report will determine the type of situations where multiple or prolonged Taser deployments occur, when they are a justified use of force, and whether they are a tactically sound use of force.

Commencement date:	November 2012
Expected completion date:	June 2013
Status:	On schedule

### Police use of force monitoring program

This project aims to improve the CMC's capacity to monitor aggregate trends in Queensland Police Service use of force incidents. The project will develop an ongoing use of force monitoring program, which will monitor and internally report on the type, frequency and basic characteristics of recorded QPS use of force incidents over time, and;

- identify any notable trends in police use of force to inform possible further work by the CMC
- assist Applied Research and Evaluation in providing timely internal advice about the frequency of police use of force.

Commencement date:	January 2013
Expected completion date:	Ongoing
Status:	Ongoing

### Policing in Indigenous communities

Police and Queensland's Indigenous communities have had a complex and often difficult history. The CMC, through our complaints and research functions, has been involved in identifying ways to improve law and justice outcomes for Aboriginal and Torres Strait Islander peoples. The Applied Research and Evaluation unit has played a significant role in driving reforms in this area. Arguably the most significant contribution was made by the CMC's Applied Research and Evaluation unit, which, at the request of the former Queensland Government, examined the relationship between the police and the Indigenous people, practices relating to detention in police custody in remote communities, and the optimal use of resources to deliver criminal justice services in Queensland's Indigenous communities (*Crime and Misconduct Commission (2009) Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*).

### Stocktake of community safety plans in discrete Indigenous communities

Action 49 of the CMC's Restoring order report requires the CMC to audit aspects of community safety plans developed in remote and other discrete Indigenous communities in 2013 (see further information below).

The CMC has recently completed a stock take of community safety plans to determine which communities have developed plans and the extent of progress in other communities. This was necessary to inform planning for the Action 49 audit, which is being conducted as a separate project.

Commencement date: March 2013  
Expected completion date: April 2013  
Status: Completed April 2013

### **Audit of community safety plans in discrete Indigenous communities (Action 49 of Restoring order)**

The CMC's Restoring order report recommended that efforts to reduce crime and violence in remote and other discrete Indigenous communities must be guided by strong local level planning. The previous Government's Just Futures strategy for Indigenous Queenslanders required the development of a community safety plan in each discrete Indigenous community and in the Torres Strait. Action 49 of Restoring order requires the CMC to audit the crime prevention and community justice (including policing) component of the plans in 2013 with a focus on their potential to reduce and prevent crime and violence, and improve the relationship between police and the communities.

Commencement date: To be determined.  
Expected completion date: To be determined.  
Status: Pending (results of the Stock take of community safety plans in discrete Indigenous communities)

### **Police interviewing Indigenous people**

In December 2011 the previous State Government released its Just Futures strategy 2012-2015 for Indigenous Queenslanders. Action 33 of the Strategy requires the Department of Justice and Attorney-General to request that the CMC conduct an audit and report on police compliance with s. 420 of the Police Powers and Responsibilities Act 2000, which provides safeguards for Indigenous people being interviewed by police. A request from DJAG was received by the CMC in January 2012. The project is currently on hold pending a Government review of the Just Futures strategy.

Commencement date: To be determined.  
Expected completion date: To be determined  
Status: Pending.

### **Police ethics research program**

Ethical standards are crucial to any organisation, particularly the police service, as ethical behaviour is the first line of defence against misconduct and corruption. Any lowering of the high ethical standards the community expects of police can be corrosive and lead to a decline in integrity, and subsequent loss of public confidence in the Service. The CMC has a clear motivation to examine trends relating to the ethics and integrity of officers serving in the Queensland Police Service.

### **Review of Police Ethics Survey**

This project involved an extensive review of the CMC's previous police ethics survey instrument to ensure that it continues to be relevant, contemporary and appropriately measures the ethical attitudes of QPS officers. The CMC and QPS collaborated to revise the survey items. The revised survey instrument was tested on police officers to ensure the validity of the new instrument.

Commencement date: March 2012  
Expected completion date: December 2012  
Status: Completed February 2013 – no further reporting

### **2013 annual police ethics survey**

The Crime and Misconduct Commission has been surveying police recruits and first year constables about ethical standards and conduct since 1995. The police ethics survey asks respondents to respond to a series of misconduct scenarios that officers may face during their careers. The survey also asks respondents a range of questions about ethics training and education, the complaints and disciplinary processes, and QPS culture and values. The survey results are a useful indicator of the ethical climate of the QPS and help to inform the Service about the ethics education and training needs of officers. Since 2008, the CMC has provided annual summaries of the police ethics survey directly to the QPS so that its training courses can be quickly modified when necessary.

Commencement date: January 2013  
Expected completion date: October 2013  
Status: On schedule

### **Ethics across the police career**

This project aims to increase understanding of the timing and situations that give rise to unethical police attitudes by examining whether:

- there are differences in the ethical attitudes of QPS recruits, First Year Constables and officers with various years of experience
- the ethical attitudes of QPS officers beyond their first year of service differ according to their geographic work locations and their work role/duties.

A report will be provided directly to the QPS.

Commencement date: February 2013  
Expected completion date: June 2013  
Status: On schedule

# Witness protection

## Significant issues

- All witnesses in our program were kept safe and were able to give their evidence in court.
- Exploiting changing technologies where possible, while limiting the risks they pose to the security of witnesses.
- Managing operational peaks and troughs in a workload based on third-party referrals.

## Protecting Witnesses

We commit to providing interim protection within 48 hours to any eligible applicant wherever their location within Australia. This ensures a rapid and effective response to assist investigators and provide protection to witnesses at risk.

### Securing convictions

The value of eyewitness evidence in combating serious and organised crime, through successful prosecutions, cannot be overstated. Evidence provided in this financial year by individuals within the program was crucial in securing convictions in cases that included murder, drug trafficking and other drug offences, assault and other offences of violence, and serious property offences.

### Providing flexibility in protection

Once a person has been accepted into the program, the level of protection will differ depending on the type of danger to which the person is exposed. Some witnesses require long-term close personal protection, including secure relocation and change of identity (when assessed as necessary and approved by the Chairperson), and the provision of a 24-hour on-call response.

Persons entering the program must strictly comply with the conditions that are necessary to ensure their safety and that of any family members who may have entered the program with them. Some people are unable or unwilling to consider this, for reasons such as family, financial or employment considerations. For others, the problem is the restrictiveness of the program and the limitations imposed on personal lifestyles and networks.

However, these people may still require assistance with their security. We have therefore adopted other more flexible support, such as shorter-term assistance with court security.

### Our Performance

For reasons that include preserving the safety of witnesses it is not possible to include reports on short-term or recent Witness Protection performance. Recorded below, however, is material from the CMC's 2011-12 annual report that indicates how Witness Protection performed against its service delivery standards in the past year.

Service Area: Witness protection

	2011-12 Target/est.	2011-12 Actual	2012-13 Target/est.
<b>Service standards (SDS)</b>			
Percentage of protected persons whose safety is maintained	100	100	100
<b>Other measures (SDS)</b>			
Number of persons admitted to witness protection program <sup>1</sup>	70	39	50
Application for witness protection assessed (persons) <sup>2</sup>	100	90	100
Percentage of eligible persons offered interim witness protection within two days	95	98	95

# Office of the Executive General Manager

## Significant issues

As noted in the Chairperson's message, management's attention is being devoted to the recommendations in the report of the expert advisory panel's review of the *Crime and Misconduct Act 2001* and the recommendations in the PCMC Inquiry Report on the release and destruction of Fitzgerald Inquiry documents.

### **Australian Public Sector Anti-Corruption Conference**

The fourth Australian Public Sector Anti-Corruption (APSAC) Conference will take place in Sydney from 27-28 November 2013. The APSAC Conference, jointly hosted by the Queensland Crime and Misconduct Commission, the Independent Commission Against Corruption (NSW) and the Corruption and Crime Commission (WA) is Australia's leading corruption prevention conference. The APSACC typically attracts more than 500 delegates from public sector agencies, including police agencies, from Australia and overseas. The theme of the 2013 APSACC - Vision.Vigilance.Action – reflects the knowledge, skills and attributes needed to effectively identify, consider and respond to corruption and misconduct. Once again, the APSACC includes a strong policing stream. Sessions in the policing stream will address integrity and misconduct in a number of contexts including police culture, use of force and oversight of critical incidents. Confirmed keynote speakers include Dr Peter Eigen, Chair The Berlin Civil Society Centre and The Hon. James Wood AO QC, and a number of Australian Police Commissioners.

### **Recruitment and appointments of senior officers**

Ms Angela Pyke was appointed to the role of Director, Financial Investigations, following the retirement of Mr John Richardson, whose lengthy career included service with the Queensland Crime Commission and the CMC. Mr Richardson's achievements in these roles, which included his integral part in successfully establishing the CMC's role of administering the civil confiscation scheme under the *Criminal Proceeds Confiscation Act 2002*, saw him honoured with a work achievement award at the CMC's annual corporate awards in February.

The Media Adviser is currently filled temporarily and recruitment to fill this role permanently has commenced.

### **Part-time Commissioners**

The Department of Justice and Attorney General have commenced the process for the recruitment of two part-time Commissioners as the term of appointment for both Mrs Judith Bell and Mr Philip Nase expires during 2013.

### **Section 260 Performance Report**

The Section 260 CMC performance report for the six-month period 1 July 2012 to 31 December 2012 was forwarded to the Attorney-General on 20 February 2013.

### **Strategic Risk & Operational Risk Registers**

The quarterly reviews of the strategic and operational risk registers were approved at the Commission meeting of 20 February 2013 and Executive Leadership Group of 27 February 2013.

# Our people

The CMC recognises that committed and capable employees are central to our success in achieving our goals and objectives. We continue to review, develop and implement human resource management practices and programs to provide a supportive and stimulating environment for all staff.

## CMC Establishment

– as at 2 April 2013

### People

Functional Area	Data	Permanent	Temporary	Casual	Grand Total	Jan-13	Differential
Executive, Office of the Commission	Headcount	13	2		15	18	-3
	FTE	12.8	2		14.8	16.6	-1.8
Strategy & Service	Headcount	51	6	1	58	56	2
	FTE	48.9	6		54.9	53.6	1.3
Crime	Headcount	46	5	2	53	51	2
	FTE	46	5		51	51	0
Intelligence	Headcount	31	2	14	47	49	-2
	FTE	28.11	1.82		29.93	30.79	-0.86
Misconduct	Headcount	88	2	1	91	91	0
	FTE	86.29	1.6		87.89	87.29	0.6
Research	Headcount	15	2		17	17	0
	FTE	14.55	2		16.55	16.4	0.15
Witness Protection & Operations Support	Headcount	51			51	51	0
	FTE	50			50	51	-1
<b>Total Count of Actual Staff</b>		295	19	18	332	333	-1
<b>Total Sum of Staff FTE</b>		286.65	18.42	0	305.07	306.68	-1.61



## Permanent positions

Functional Area	Apr-13	Jan-13	Differential
Executive, Office of the Commission	15	15	0
Strategy & Services	56	56	0
Crime <sup>1</sup>	51	49	2
Intelligence <sup>2</sup>	34	33	1
Misconduct	89	89	0
Research	19	19	0
Witness Protection & Operations Support	55	55	0
<b>Total</b>	<b>319</b>	<b>316</b>	<b>3</b>

### Notes

1. Conversion of two temporary positions in the Proceeds of Crime team to permanent positions.
2. Conversion of one temporary position in the Electronic Collections Unit into a permanent position as the funding was always for a permanent position.

## Police Service Reviews

Commissioners for Police Service Reviews (Review Commissioners) arbitrate on any grievances that police officers may have about promotions, transfers or disciplinary action. To ensure the transparency and independence of the review process, Queensland Police Union of Employees representatives have a standing invitation to attend promotion, transfer and disciplinary review hearings as observers.

When a review matter progresses to a hearing, the Review Commissioner is empowered to consider the material presented and prepare written recommendations for the attention of the Commissioner of Police (Commissioner), who makes the final decision. If a recommendation is not accepted, the Commissioner must provide the Review Commissioner with a statement of reasons for this.

For the reporting period 1 February to 31 March 2013, the following statistical information applies:

Status	Promotion	Transfer	Unapplied Transfer	Disciplinary	Non-appointment
Matters lodged	2		2		
Matters withdrawn before hearing					
Matters out of jurisdiction					
Matters awaiting hearing at 24.10.12	4				
Matters heard	2				1
Matters progressing (awaiting papers)	3		3		
Matters referred for Judicial Review					
Matters awaiting outcome from hearings held in previous reporting period					

# Communications

## External Presentations

PRESENTER AND TITLE		AUDIENCE	TOPIC
April 2013			
15.04.2013	Lauren Hancock, Research Officer	2013 Training Seminar of the International Association of Auto Theft Investigators (Australasian Branch)	Organised property crime in Queensland
March 2013			
28.3.2013	Elsja Dewis and Chris Lee, Indigenous Advisers, Misconduct Prevention, CMC	QPS new recruits	Indigenous Cultural Appreciation
26.3.2013	Elsja Dewis and Chris Lee, Indigenous Advisers, Misconduct Prevention, CMC	QPS new recruits	Indigenous Cultural Appreciation
21.3.13	Dianne McFarlane, Director, Integrity Services	Chairs of the Hospital and Health Service Boards	Reporting official misconduct
14.3.2013	Paul Collings, Senior Prevention Adviser, CMC	Department of Science, Information Technology, Innovation and the Arts, – Media & Communication staff	Social Media and Public Officials
8.3.13	David Goody, Manager, Proceeds of Crime	Asia/ Pacific Group on Money Laundering (APG)/ Australian Transaction Reports and Analysis Centre (AUSTRAC) Pacific Typologies Workshop 2013	Recovering the proceeds of corruption in the Pacific  Case Study – Gordon Richard Nuttall
7.3.2012	Paul Collings, Senior Prevention Adviser, CMC	Local Government officers	<i>Government Procurement Conference</i> , LocalBuy, <u>Discussion Panel</u> Brisbane Convention Centre
5.3.13	Warren Strange, Assistant Commissioner, Misconduct	National Bureau of Corruption Prevention, China	Opening & Welcome
	Courtney McDonald Adviser, Misconduct Prevention		Misconduct Prevention
	Darren Brookes Assistant Director, Police Program		CMC Oversight of the Queensland Police Service

	PRESENTER AND TITLE	AUDIENCE	TOPIC
	Integrity Services, Misconduct		
5.3.2013	Paul Collings, Senior Prevention Adviser, and Sue Harbidge, a/Assistant Director, Misconduct, CMC	Tony O'Dwyer, Senior Investigator, Passport Fraud Section, DFAT	Prevention & integrity strategies for Australian Passport Office.
1.3.13	Marie Zitny, Acting Manager Strategic Intelligence Unit	Queensland Police Service Intelligence Officers Course – (Phase 2)	The CMC's Organised Crime Market Assessment
February 2013			
28.2.2013	Kylee Rumble, Assistant Director Integrity Services, CMC Vivienne Van Der Laak, Manager Legislation and Policy, Public Service Commission	Public Sector senior and middle managers  Session 1 - 40 people Session 2 - 32 people	CMC Lunchbox Session  Lunchbox – Back to Basics – What is Misconduct and how do I make a complaint?
21.2.13	Mark Docwra, Assistant Director, Local Government and GOC program/Integrity Services	Redland City Council	Identifying, reporting and dealing with official misconduct.
21.2.2013	Paul Collings, Senior Prevention Adviser, (with Mark Docwra, Assistant Director, Integrity Services), CMC	Redland City Council [CEO and 30 staff]	Complaints and prevention
20.2.2013	Paul Collings, Senior Prevention Adviser, CMC	Department of Education, Training and Employment, Finance Section [90 staff + teleconference]	Social Media and Public Officials
19.2.2013	Elsja Dewis and Chris Lee, Indigenous Advisers, Misconduct Prevention, CMC	Indigenous Police recruits (11)	Role and function of the CMC
14.2.2013	Elsja Dewis and Chris Lee, Indigenous Advisers, Misconduct Prevention, CMC	QPS new recruits	Indigenous Cultural Appreciation
12.2.2013	David Honeyman, Principal Adviser, Misconduct Prevention, CMC	Public Service Senior Managers	Fraud Awareness Day -  Raising awareness amongst senior public servants about fraud and promoting openness and accountability through reporting.
12.2.2013	Elsja Dewis and Chris Lee, Indigenous Advisers, Misconduct Prevention, CMC	QPS new recruits	Indigenous Cultural Appreciation

## Website Statistics

*Website activity at 31 March 2013*

Month	Total visits	New visitors	Returning visitors	Total page views	Average page views	Average time on site	Number of website subscribers
November 2012	9802	5894	3908	32 349	3.30	2:45	724
December 2012	6782	4054	2728	22 660	3.34	2:55	
January 2013	8021	4839	3182	25 596	3.19	2:49	
February 2013	8821	5618	3203	28 130	3.19	2:49	
1 – 26 March 2013	11135	7253	3882	32 797	2.95	2:25	

*Recently published at 31 March 2013*

File/page	November visits	December visits	January visits	February visits	March visits	Total
Recent enforcement activities and convictions	679	431	231	186	266	1793
Misconduct lunchtime information session calendar (lunchbox sessions)				392	61	453

# Office of the General Counsel and the Legal Services Unit

## General Counsel

The CMC's General Counsel reports directly to the Chairperson. The role provides the Chairperson and Commissioners with independent legal advice and support on any matter bearing on the responsibilities of the CMC.

General Counsel is regularly called upon to provide advice and representation in matters concerning:

- the CMC's compliance with statutory and regulatory requirements, including under the *Telecommunications (Interception and Access) Act 1979* (TIA Act);
- proposals for legislative reform in areas relevant to the CMC's functions; and
- the CMC's appearances in courts, tribunals and Commissions of Inquiry.

General Counsel can also appear or preside in investigative hearings.

## Legal Services Unit

The related Legal Services Unit provides legal advice and representation relating to:

- all litigation involving the CMC, including crime or misconduct investigations where it is necessary to make an application to a court, such as contempt of court applications, and reasonable excuse or privilege claims;
- access to CMC material under subpoenas, summonses or section 62 of the *Crime and Misconduct Act 2001*, or as part of the litigation process;
- Queensland Civil and Administrative Tribunal police misconduct reviews and appeals; and
- applications for warrants under the TIA Act; and helping the CMC meet its obligations to external and Commonwealth agencies overseeing our telecommunications interception function.

Officers in the Legal Services Unit also determine applications for access to CMC documents made under the *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act), and maintain a legal advice database for lawyers throughout the Commission.

## Significant issues

### Litigation involving the CMC being handled by the LSU

#### 1. *Whitelaw v O'Sullivan [2010] QCA 366; O'Sullivan v Whitelaw [2011] QDC*

On 12 November 2008 police officer, Constable Michael O'Sullivan was found guilty in the Brisbane Magistrates Court of common assault. The alleged assault occurred while Constable O'Sullivan was on duty, assisting other officers detaining two men for a breach of the peace in Adelaide Street in 2007. Constable O'Sullivan had struck the complainant with a baton three times, whilst the complainant was affected by capsicum spray. Constable O'Sullivan argued it was self defence; the complainant was posing a threat. The main evidence was CCTV footage. The Magistrate found that it would not be and was not reasonable for Constable O'Sullivan to believe that complainant was going to assault the police officers.

Constable O'Sullivan appealed to the District Court under s.222 of the Justices Act 1886. The District Court judge set aside the conviction and found that there was insufficient evidence to find beyond reasonable doubt that appellant was not acting in self-defence or aiding in self-defence (ss271,273) and that appellant did not honestly but mistakenly believe on reasonable grounds; that the respondent posed a threat of violence (s.24) and that the authorised the use of force which was subjectively reasonably necessary.

The CMC successfully appealed to the Court of Appeal, on the ground that the learned judge erred on his interpretation of section 50 of the Police Powers and Responsibilities Act (PPRA) having failed to give adequate regard to s.615 PPRA, and that the learned Judge misdirected himself in the manner in which ss 24, 271 and 273 of the *Criminal Code* was applied.

The Court of Appeal set aside that decision. It held that the use of force by the respondent was subject to the requirement in s.615 that the force be “reasonably necessary”. It was found that s.50 does not authorise the use of force, and that the authority to use force comes from s.615 (*Whitelaw v O’Sullivan [2010] QCA 366*).

On 19 July 2011 the District Court Judge in an extempore judgement allowed the second s.222 and the conviction was quashed. The Judge made findings of fact, *inter alia*, that it was reasonable for Constable O’Sullivan to conclude that the complainant posed a threat which ‘was a real threat genuinely perceived’ in light of the complainant’s movements from the CCTV and physical pose.

The CMC is currently in negotiation with Constable O’Sullivan’s legal representatives, in relation to costs. It is expected that the issue of costs will be resolved in April/May 2013.

## **2. *B v Crime Reference Committee [2012] QSC***

“B” brought an application for a statutory order of review against the Crime Reference Committee (CRC), CMC & Mr Scott on 6 September 2011. The judicial review concerned decisions of the CRC and Mr Scott with respect to the reference of a particular major crime matter relating to a large fraud investigation to the CMC, the holding of hearings, and issuing an attendance notice to “B” to attend a hearing. “B” submitted he was aggrieved by the decisions because he had been the subject of criminal charges, relating to this investigation, which were withdrawn at a committal proceeding earlier this year. At the time of the CRC reference, “B” still had charges pending against him.

On 19 June 2012 Douglas J delivered his judgment in this matter, dismissing the application by “B” in relation to all decisions and awarded costs to the Commission. The matter is now finalised, save for the resumption of the crime hearings. Current advice is that the applicant, “B” fled overseas after the hearing, but prior to judgment being delivered. If extradition proceedings are successful, the CMC intends to pursue “B” for costs.

## **3. *Younan v CRC & Callanan; Hamdan v CRC & Callanan***

Younan and Hamdan are the applicants in two separate judicial review proceedings in the Supreme Court against the CMC’s CRC and former Assistant Commissioner, Crime, Mr Callanan. These matters relate to a CMC investigation named Operation Hotel Fawn.

### Grounds of the application

A summary of the grounds of the judicial review is that the applicants are aggrieved by the decisions of the CRC and Callanan with respect to decisions to call the applicants to crime hearings at the CMC. By reference to each of their applications: *“The Applicant is aggrieved by the decisions because the effect of the decisions is that he is required to attend and give evidence under compulsion at a hearing conducted by the Second Respondent without the usual protections of the criminal justice system and specifically without the protection of any privileges that arise under the common law other than legal professional privilege.”*

There have been interlocutory proceedings in relation to this matter, however the substantive proceedings are still in progress.

### Interlocutory proceedings

A preliminary hearing in this matter was held on 12 June 2012, dealing with an application for exemption from disclosure of certain materials by the CMC on account of a claim of public interest immunity. On 22 August, M Wilson J delivered her decision on this preliminary matter. She found in the Commission’s favour, namely that the claim of public interest immunity was made out.

An appeal lodged by Younan and Hamdan against M Wilson J’s interlocutory decision on the public interest immunity claim was heard on 18 March before Muir and Fraser JJA and Douglas J. The decision has been reserved.

### Substantive matters

The substantive matters, i.e. the judicial review applications, are on hold pending the decision in relation to that appeal as to the public interest immunity claim. The CMC will resist the application for a statutory order of review.

#### **4. Queensland Child Protection Commission of Inquiry**

This Commission of Inquiry chaired by the Hon Tim Carmody SC is conducting an examination of the operation of the Child Protection System in Queensland. The CMC's role relates to terms of reference 3(a) and (e) particularly, and generally as will assist the Commission.

Term 3(a) relates to the implementation of the CMC's recommendations of the 2004 report into the abuse of children in care. Term 3(e) relates to government responses to historical child abuse in youth detention centres.

The CMC has been given leave to appear at the Inquiry in relation to terms of reference 3(a) and (e), and generally in relation to other matters in which the Commission has an appropriately established interest, and for the purpose of assisting the Commission of Inquiry in light of the CMC's past work in the field of child protection (in this regard see the CMC's publications *Protecting the Children – An Inquiry Into Abuse of Children in Foster Care*: January 2004; and *Reforming Child Protection in Queensland*: July 2007).

Term of reference 3(e) has been taken to refer to the government's response to the matter known as the 'Heiner Affair'. The CMC has had some historical involvement in this matter. Having regard to a decision of Commissioner Carmody, it is expected that the inquiry into this aspect of the matter will be limited to the actions of the executive government.

Final submissions were filed on 22 March 2013. The Inquiry is due to report by July.

#### **5. R v Michael Gerard Briody; R v Matthew Briody**

Former CMC Research Officer Michael Briody was charged with offence against s.213 CM Act (Secrecy) over the inappropriate and unauthorised disclosure of a confidential CMC discussion paper.

His son, Matthew Briody, was also charged with breaching s.213, by posting the in-confidence CMC discussion paper on the internet. This matter has attracted media attention.

Michael Briody, a former police officer and employee of the Commission took home and permitted his son access to the CMC's discussion paper. The paper was for law enforcement use only. His son subsequently posted the paper deliberately and publicly on various forums.

Dr Briody was charged with a breach of s.213 of the CM Act (Secrecy), which carries maximum penalties of \$9350 and 12 months' imprisonment.

On 8 November 2012 Dr Briody appeared in the Brisbane Magistrates Court before Ms Wendy Cull SM. Dr Briody entered a plea of guilty to the charge and was sentenced to eight (8) months imprisonment, suspended after a period of 18 months. A conviction was recorded.

On 30 January 2013 Matthew Briody (the son of Dr Briody) appeared in the Brisbane Magistrates Court before Mr Hine SM on the same charge. The charge arose from the circumstances set out above.

Matthew Briody entered a plea of guilty to the charge and was placed on probation for two years. Matthew Briody is not to commit another criminal offence during the period of the order, is to report to the Probation and Parole Office Brisbane, and submit to medical and psychiatric testing as determined by the Probation and Parole Office. A conviction was recorded.

#### Police Discipline matters in QCAT or other courts

##### **1. CMC v Flegg & Anor [2013] QCATA 029**

This matter is a QCAT review by the CMC of a disciplinary decision to suspend Sergeant Flegg's demotion (3.5 to 2.9) for a period of 2 years conditionally, arising out of his handling of the search and rescue operation and the sinking of the vessel *Malu Sara*, which resulted in the deaths of 5 people in the Torres Strait in 2005. The QPS disciplinary finding against Sergeant Flegg was that he failed to alert search and rescue authorities until some hours after he received a call that the vessel was sinking.

In the inquest into the incident, the State Coroner was critical of the conduct of the police search and rescue and recommended disciplinary proceedings against the boat builder and Sergeant Flegg.

The CMC submitted that the suspended demotion was inadequate on the basis that it does not reflect the seriousness of the police misconduct and that dismissal was the appropriate sanction.

The matter proceeded to a hearing in QCAT on 12 December 2011. The decision was delivered on 24 February 2012. The then Member, Richard Oliver confirmed the QPS decision of a suspended demotion.

The CMC appealed this decision to the Appeals Tribunal in QCAT on the grounds that the tribunal erred in that no reasonable Tribunal could have concluded that the decision reviewed should be confirmed. It was submitted that the appropriate sanction was demotion. The CMC's appeal was upheld by the Appeals Tribunal on 20 February 2013. Pursuant to the orders, the parties made submissions as to the wording of the orders for the increased sanction.

On 21 March 2013 Mr Flegg's representatives filed in the Court of Appeal a Notice of Appeal and Application for leave against the Appeal Tribunal's decision.

## **2. CMC v Barnett (QPS) & Groufsky**

The CMC applied to review a decision of Deputy Commissioner Barnett of the QPS in relation to Sergeant Shaun Groufsky on 1 November 2011. The decision related to one disciplinary charge of police misconduct against Sergeant Groufsky, i.e. that his conduct was improper in that he (a) inappropriately applied force to a prisoner and (b) failed to treat that prisoner with dignity and respect after he was subjected to an unclothed search.

DC Barnett found part (a) of the misconduct charge and part (b) to be substantiated and was satisfied that Sergeant Groufsky's conduct in relation to part (b) was substantiated. DC Barnett imposed a sanction of a reduction in salary by one pay point from Sergeant 3.2 to Sergeant 3.1, and it was noted that at the expiration of 12 months Sergeant Groufsky would be able to progress one pay point per year providing he completes a satisfactory Performance Planning and Assessment (PPA) for each year. DC Barnett also directed him to undertake a course or counselling "*in better equipping you to deal with stressful or volatile situations and difficult individuals*".

### Grounds of the application

The CMC made an application to review DC Barnett's decision in relation to his decision not to substantiate part (a) of the charge, and also the decision to penalise Sergeant Groufsky by reducing his salary by one pay point as a result of finding part (b) of the charge to be substantiated.

In written submissions dated 8 February 2013, the CMC submitted that:

- The evidence showed that Sergeant Groufsky inappropriately applied force to the prisoner;
- Having regard to the seriousness of the misconduct which was engaged in by someone holding the rank of Sergeant the sanction of demotion was required if proper standards of ethical behaviour and public confidence in the Police Service were to be maintained.
- This increased sanction should be imposed in relation to both parts (a) and (b) of the charge.

There have been interlocutory proceedings in relation to this matter; however the substantive proceedings are still in progress.

### Interlocutory proceedings

At a directions hearing on 7 March 2012, QPS sought to have Sergeant Groufsky's service history excluded from consideration of the matter, and to have the review in relation to the substantiation of the allegations and the sanction heard in two separate proceedings. QCAT made an 'on-the-papers' decision in relation to these issues on 5 April 2012. Sergeant Groufsky's legal representative filed an appeal in relation to this issue on 24 May 2012. QCAT, by decision of the Hon. James Thomas AM QC dated 2 October 2012, dismissed the appeal.

### Substantive proceedings

Directions were issued for the further conduct of this matter, which is now set down for hearing on 15 May 2013. The CMC has briefed Michael Copley SC, and his submissions on the CMC's behalf were filed on 8 February 2013. Submissions on behalf of the two respondents have also been filed, and the matter awaits hearing.



### **3. CMC v QPS & Francis**

The CMC applied on 19 April 2012 to review a decision of Deputy Commissioner Barnett of the QPS in relation to police officer Constable Francis in relation to sanction. DC Barnett substantiated three disciplinary charges of misconduct against Francis, summarised as:

- That on various dates his conduct was improper in that he a) whilst on duty, inappropriately used a police service vehicle to transport two civilian officers; b) whilst off duty, was transported home in a police service vehicle and subsequently urinated on the back of the police vehicle when it was stopped on the side of the road; and c) whilst off duty, inappropriately requested another officer to transport him in a police service vehicle;
- That on various dates his conduct was improper in that he a) inappropriately performed his functions as a police officer where there was an apparent conflict between his duty to act impartially and act in the interests of an acquaintance; b) inappropriately investigated a complaint of break and enter for a dwelling in which he resided and subsequently arrested a suspect for that offence as well as assault police; c) inappropriately accessed and/or released QPS information; d) inappropriately discussed details of CMC coercive hearings with a civilian;
- That on various dates his conduct was improper in that he a) engaged in an act of reprisal by arranging for a can of dog food and a dog bowl to be given as a 'secret Santa' present to another officer who he suspected of reporting discipline matters; b) failed to report misconduct that he should have reasonably suspected had occurred.

DC Barnett imposed a sanction of reduction in pay point from Constable 1.5 to 1.1, and transferred Francis to another region to a uniform position and be placed into the First Year Constable program. He also ordered that Francis be eligible to progress one pay point every 6 months dependent only on obtaining a satisfactory PPA for each period.

#### Grounds of the application

The CMC submitted that the sanction imposed on Francis was inadequate and failed to achieve the objectives of the disciplinary process, and that the decision maker erred in taking into account an irrelevant consideration in determining sanction, namely 'environmental considerations'. Put simply, the CMC's position is that Constable Francis is unsuitable for further employment as a police officer.

A compulsory conference in QCAT proceeded on 25 September 2012. The matter did not resolve, and further directions were set by QCAT. This matter was the subject of a media article dated 24 August 2012.

The matter is now set down for final hearing on 31 May 2013, and submissions have been filed on behalf of each of the parties. The CMC is represented by Michael Copley SC, Barnett is represented by MD Nicolson of Counsel, and Constable Francis has briefed Steve Zillman of Counsel.

### **4. CMC v Barnett & Thomas**

The CMC filed an application to review on 5 December 2012 in relation to the decision of Deputy Commissioner Barnett with respect to Sergeant Thomas. The review was with respect to sanction only. DC Barnett determined that a disciplinary charge of misconduct was substantiated, namely that he failed to take appropriate action following a report of an abandoned vehicle in a remote location near Wyandra. Whilst it was not alleged that Sergeant Thomas caused the death, the occupant of the car was found deceased some days later and exposure was one of the possible causes of death.

#### Grounds of the application

The basis of the CMC's application is that the sanction imposed does not adequately reflect the gravity of the conduct, was entirely disproportionate to the findings concerning the conduct, did not reflect the purpose of disciplinary proceedings, and did not reflect the seriousness of the conduct or the potential danger or risk members of the community were exposed to by the conduct.

Also of note is that the decision of DC Barnett in this matter relied on the original QCAT decision in Flegg, which found in favour of the original QPS decision-maker – however this was overturned on QCAT review (in favour of the CMC) and is currently on further appeal before the Court of Appeal.

A compulsory conference was held, but did not resolve this matter. A hearing has been set for 11 June 2013.

Eoin Mac Giolla Ri of Counsel is briefed to appear on behalf of the CMC. Submissions on behalf of the parties have been partially filed to date.

## **5. CMC v Barnett & Selwood**

### CMC's application

The CMC filed an application to review on 3 January 2013 with respect to the decision of Barnett in relation to Senior Constable Duck (nee Selwood). The disciplinary charges of misconduct were that Senior Constable Duck's conduct was improper in that she a) failed to report misconduct by another officer which she knew or should have reasonably suspected had occurred; and b) failed to take reasonable steps to maintain the safe custody of a civilian. DC Barnett decided that part a) of the misconduct charge was substantiated and part b) of the misconduct charge was unsubstantiated. DC Barnett imposed a sanction in relation to part a) of 22 hours of community service.

### Grounds of the CMC's application

The CMC's grounds for reviewing the sanction in relation to part a) are that it does not properly reflect the purpose of disciplinary proceedings, was disproportionate to the findings made concerning the conduct, and does not adequately reflect the seriousness of the conduct engaged in by the officer. The CMC's grounds for reviewing the unsubstantiated of part b) are that it was contrary to the relevant law and evidence, involved a misapplication of the 'Briginshaw' principle, and the facts found by DC Barnett are inconsistent and against the weight of the evidence.

### Cross-application

Senior Constable Duck filed an application to review on 3 January 2013, contending that the part of the charge that was substantiated should not have been, and that the sanction imposed was too high.

A compulsory conference was held on 19 March 2013, but did not resolve the matters.

Directions have been issued for the further conduct of the matter, including the filing of the CMC's submissions (for both applications) on 3 May 2013, and the listing of a further directions hearing on 21 May 2013.

Michael Copley SC is briefed to appear on behalf of the CMC when these applications proceed to hearing.

## **6. CMC v Doyle (QPS) & Arndt**

### CMC's application

The CMC filed an application to review a decision of AC Doyle in relation to Constable Arndt on 12 March 2013. The CMC also sought an extension of time for filing of that application. AC Doyle made a decision not to commence disciplinary action in relation to an allegation of misconduct against Constable Arndt, and instead made a decision that he be provided with 'managerial guidance'. Constable Arndt had been convicted of assault following a private prosecution.

### Grounds of the CMC's application

In the court proceedings for assault, it was found that the force used was not authorised, justified or excused by law in imposing a conviction and fine on Constable Arndt. The CMC submits that the decision of AC Doyle not to commence disciplinary action against the second respondent was in error and failed to achieve the purposes of discipline.

### Constable Arndt's strike out application

An application to strike out has been filed by Constable Arndt. The contention is that the QCAT is without jurisdiction on the basis that the 'managerial guidance' did not constitute a reviewable decision. The CMC opposed the strike out application. A decision from QCAT is pending 'on the papers'. As this preliminary decision will affect whether the substantive application by the CMC will continue or not, the further timetable of this matter will be determined following QCAT's decision on the strike out application.

## 7. CMC v Barnett (QPS) & Westby

The CMC filed an application to review on 27 March 2013 in relation to a decision of DC Barnett not to make disciplinary declaration against former Senior Constable Stephen Westby. DC Barnett determined that two disciplinary charges of misconduct against Senior Constable Westby were substantiated, namely that he (1) intentionally damaged and then discarded a memory card that was likely to contain video images relevant to coronial investigations examining the death of a motorist; and (2) was untruthful during a disciplinary interview when questioned about the recording. However, DC Barnett declined to make a disciplinary declaration and to take no further action.

### Grounds of the CMC's application

The CMC contended that in failing to make a disciplinary declaration, DC Barnett gave too much weight to Senior Constable Westby's personal circumstances and failed to pay sufficient regard to the purposes of the disciplinary process. In particular, DC Barnett failed to have sufficient regard to the protective nature of police discipline. The CMC also considers that DC Barnett failed to have sufficient regard to the gravity of the misconduct and the seriousness of the dishonesty involved.

The CMC awaits a timetable from QCAT as to the future direction of this matter, including the setting of a compulsory conference.

### Legislative Reform

In the reporting period, the CMC was invited to provide comment on proposals for legislative reform. The OGC is regularly called upon to consider these proposals and co-ordinate responses. The CMC gave consideration to, and commented on, the following bills:

- *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012;*
- *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Bill 2012;*
- *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012.*

In addition, the CMC provided the following submissions in relation to law reform:

- A submission in response to the Electoral Reform Discussion Paper; and
- A submission in relation to the statutory review of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

The CMC's QCAT Act review submission traversed the following issues:

1. Are QCAT police discipline matters being dealt with "quickly" (s.3(b) QCAT Act)?
2. Are QCAT police discipline matters dealt with in a way that is "accessible, fair and just" (s.3(b) QCAT Act)?
3. Is QCAT promoting the quality and consistency of tribunal decisions (s.3(c) QCAT Act)?

In summary, the CMC proposed that legislative amendment should occur to:

- shorten the time taken to set down police disciplinary reviews, including by relaxing the current position taken by QCAT regarding compulsory conferences. The issue of delay is important, as it is often relied upon by QPS officers as a factor in mitigation of sanction in the disciplinary jurisdiction;
- remove the impediment which presently exists to the CMC testing evidence before the original decision-maker in applications for review of a reviewable decision under s.219G of the CM Act; and
- remove the current impediment to the CMC commencing official misconduct proceedings in QCAT's original jurisdiction by removing the right of police officers to claim self-incrimination privilege.

### Telecommunications (Interception and Access) Act 1979 (Cth)

The Crime and Misconduct Commission (CMC) became an "enforcement agency" after the enactment of the *Telecommunications (Interception and Access) Amendment Act 2007* (Cth) in November 2007. Until the enactment of the *Telecommunications Interception Act 2009* (Qld) (Qld TI Act) in June 2009, the CMC utilised telecommunications data and stored communications information as part of its investigative strategies.

Under the Qld TI Act, the CMC was declared to be an interception agency for the purposes of the *Telecommunications Interception and Access Act 1979* (Cth) (TIA Act) on 8 June 2009. From this point, CMC investigative teams have increasingly used telecommunications interception (TI) capabilities as part of their investigative strategies, to great

effect. The TI regime imposes a number of stringent obligations upon the CMC; accordingly, the agency has developed formal policies and procedures and provides ongoing TI training to assist relevant CMC officers in appropriately discharging those obligations.

It has been recognised that the TI landscape is ever changing and that the interception of data has become increasingly important in the management of criminal and misconduct operations. Given the complexity of the TIA Act and its inability to keep pace with technological advances in telecommunications, the Commonwealth Government is currently contemplating TI Act reform, in particular, principles-based TI legislation that will be flexible enough to encompass new technologies and provide a more streamlined approach for agencies who use TI as an investigative tool.

To this end, the Commonwealth Attorney General, the Hon Nicola Roxon, has sought a review by the Parliamentary Joint Committee of Intelligence and Security (PJGIS) of a number of proposals. The PJGIS have been provided with terms of reference by the Cth Attorney General to consider as part of their review. The terms of reference do not include an exposure draft for the PJGIS to consider.

Submissions to the PJGIS review closed on Monday 20 August 2012.

The PJGIS published its first 177 submissions on Friday 24 August of which the CMC's submission was number 147.

The PJGIS held public hearings in September and November 2012 to hear from a vast number of stakeholders in relation to TI Act reform including law enforcement agencies, industry and community groups. The CMC attended a hearing in September 2012 to elucidate further on issues outlined in the public submission.

The PJGIS' final report is expected to be released after it has been tabled in Parliament in March 2013.

All necessary forms for TI and stored communications warrants have been approved and are currently in use. TI warrant powers are utilised regularly, adopting the compliance procedures established by GC & LSU.

Refresher training for all CMC officers regarding telecommunications interception procedures will be conducted over the coming months incorporating the new TI policy framework, once approved by the Commission.

An internal review of the CMC procedures has been conducted. A new TI policy framework is currently awaiting Commission approval.

Updated forms and procedures developed by GC & LSU in consultation with the Telecommunications Working Group will be introduced to staff during formal training. The LSU will then provide ongoing support in relation to these documents.

The procedures adopted in relation to using, communicating and destroying TI product are subject to ongoing review to ensure compliance with legislative requirements.

The Parliamentary Crime and Misconduct Commissioner has in the past reported favourably in relation to the CMC's procedure on obtaining TI warrants and managing TI warrant information. The CMC has also been assessed as compliant by the Commonwealth Ombudsman with regard to stored communications obligations under the TIA Act.

The CMC continues to provide whatever input the Commonwealth Attorney-General's Department requests.

#### Government response to PCMC 3 Year Review

The CMC awaits further advice from DJAG about the progress of the review. The most recent 3 year review (July 2011) proposed further legislative amendment, namely:

- Extension of the time limit for the CMC to commence a QCAT review application (from 14 to 28 days);
- Abrogation of self-incrimination privilege in QCAT hearings, to enable reliance on previous statements;
- Changes to the review jurisdiction of QCAT to enable the CMC to initiate police misconduct disciplinary proceedings, where that is desirable in the public interest.
- The former government supported these recommendations, but they are yet to be implemented. The PCMC's latest three yearly review recommends (29) that the government give a high priority to completing the review of chapters 3 and 4.

#### Business Plan Projects

- Lead the CMC to initiate legislative change to resolve any ambiguity in drafting of ss. 190 and 192 of the *Crime and Misconduct Act 2001* (C&M Act) - By correspondence dated 20 May 2008 and 23 June 2008, the Chairperson wrote to the Attorney-General outlining the need for legislative amendment to show a clear

legislative intention to abrogate the right of a witness appearing before a CMC hearing to refuse to answer questions on the grounds of spousal privilege and privilege against self-incrimination. Per its response to the 2008 Three Year Review of the CMC, the Queensland Government is still considering its policy position regarding spousal privilege. This issue has been raised again with the Government as part of the 2011 Three Year Review. In that document, the Commission again reiterated the need for the review of Chapters 3 and 4 of the C&M Act.

- Creation of policies, procedures and review of forms for:
  - Right to Information and Internal Reviews;
  - Queensland Civil and Administration Tribunal (QCAT) reviews
  - LSU documentation protocols;
  - Dissemination of information by the CMC;
  - Compulsory Notices issued by the CMC;
  - Crime & Misconduct Act search warrants;
  - Open and Closed Hearings;
  - Issue of interstate notices (SEPA) & subpoena;
  - Preparation of Prosecution Briefs of Evidence;
  - Preparation of Briefs of Evidence for hearings;
  - Responding to threats of serious harm (Policy); and
  - Responding to threats of serious harm obtained through telecommunications interception (procedure).

The review of Ch 3 & 4 of the C&M Act has not progressed due to other priority matters. These policies will be developed as the content of chapters 3 and 4 is finalized.

The need to review Ch 3 and 4 was reiterated in the CMC submission on the last Three Year Review. A comprehensive submission in support of this recommendation was provided to the former Attorney General and Minister for Industrial Relations. The committee has made a recommendation (29) in its most recent Three Year Review that the government give a high priority to completing the review, but the review has not yet been implemented.

- Telecommunications Interception Policy Review The CMC recognises the importance of adhering to the legislative requirements of the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act).

To ensure all CMC officers are provided with a clear statement of the CMC's position in relation to the collection, use and communication of lawfully intercepted information under the TIA Act, the CMC has undertaken a detailed review of its related policy documents. The CMC Chairperson has approved the Telecommunications Interception Policy. The seven associated Work Instructions have also been finalised and awaiting approval. Once approved, these policy documents will provide CMC officers with clear guidance on the lifecycle of a telecommunications interception warrant.

### **Right to information/Information Privacy**

A total of 11 applications were received in the reporting period: five under the RTI Act, three under the IP Act, and three third party consultation requests, received from other agencies. These applications vary in terms of complexity, amount of information to be considered, and the time taken to make each decision. As noted above, the applications are considered by Legal Services Unit Officers who also provide advice and representation with regard to applications for warrants under the TIA Act and assisting the CMC in meeting its reporting and legislative obligations under the telecommunications interception regime.

The CMC takes its pro-disclosure obligations as set down under the right to information regime seriously; accordingly, Legal Services Unit Officers approach each application with the aim of fulfilling Parliament's intention of emphasising and promoting the right to government information. There is, however, a constant need to balance this intent with the very real need to ensure confidentiality with regard to personal information, confidential investigations and covert operations. This balancing act adds to the complexity of each application to be considered.

Details of the applications are found later in the report. Note that third party applications are not generally recorded for reporting purposes as these are not applications made to the CMC.

# Media

## Matters of Interest

- CMC statement (6 March) following an article in *The Australian* related to the CMC's release, in error, of sensitive Fitzgerald Inquiry records and subsequent (8 March) announcement of the Parliamentary Crime and Misconduct Committee's "Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents", with public hearings held over nine days (13 March – 28 March), and subsequent report released 5 April.
- Announcement by CMC Chairperson Ross Martin SC (8 March) of his decision to take a leave of absence as the first step towards ill-health retirement, ultimately resulting in his formal resignation tendered to the Attorney-General on 3 April.
- Governor in Council approval of relieving arrangements during a vacancy in the office of CMC Chairperson or any absence of the Chairperson (as of 15 March) after the previous standing delegation expired.
- Recommendations contained in a report by an expert advisory panel established by the Attorney-General to review the *Crime and Misconduct Act 2001* released 3 April. A CMC statement the same day noted the CMC Chairperson will be one of four people to sit on an Implementation Panel [Recommendation 17], also including the Public Service Commissioner, to implement recommendations that the State Government chooses to adopt.
- CMC statement (19 March) related to assessment outcome that a complaint against Peter Costello has resulted in no further action due to the matter falling outside the CMC's jurisdiction.
- CMC statement (19 March) related to a November 2012 assessment of a complaint against State Member for Redcliffe Scott Driscoll MP as not involving official misconduct and therefore falling outside the CMC's jurisdiction. The statement was made after the matter was placed on the public record. The CMC advised it was assessing "all new relevant information as to whether it requires any further action". A subsequent CMC statement (24 April) detailing finalisation of the assessment of new relevant information and the commencement of a co-operative misconduct investigation with the Queensland Police Service into allegations including official misconduct and fraud which arise from that information.
- The CMC's ongoing misconduct investigation into the process surrounding the appointment of a departmental officer at the Department of Transport and Main Roads.
- The CMC's confirmation (18 February) that the Department of Science, Information Technology, Innovation and the Arts had been in contact with the CMC over media reports about allegations of cash payments being offered for contracts. The CMC further confirmed it had commenced an assessment of the matter.
- The Crime Reference Committee's approval of a new general referral allowing the CMC to respond rapidly to requests for assistance with investigations into violent crimes involving vulnerable victims.
- The CMC's assessment of a complaint about the approval of two resource (coal seam gas) projects.
- Media coverage following two successful criminal paedophilia prosecutions in March arising from the CMC's Cerberus investigations, prompting the CMC's timely warning to parents about the persistent threat of internet-based paedophiles.
- A 20 February decision by the Appeals Tribunal in QCAT to allow the CMC's appeal in response to the QCAT decision in *CMC v Flegg & A/C O'Regan* affirming the QPS disciplinary sanction of a suspended demotion. The case related to a substantiated allegation of police misconduct against Warren Flegg concerning his failure to take appropriate and required action in his role as Search and Rescue Mission Coordinator in relation to a missing vessel, the *Malu Sara*, off Thursday Island in October 2005.
- Ongoing media interest in the CMC's misconduct investigation into a case of major fraud at Queensland Health, as well as ongoing proceeds of crime action against Hohepa Hikairo Morehu-Barlow.
- The CMC's confirmation that it is assessing a complaint against the Whitsunday Regional Council, relating to the Council's spending on disaster recovery works.
- Ongoing media interest in the CMC's action on three fronts regarding an alleged improper enrolment into the University of Queensland's 2011 medical program, and the progress of a public report.

## Media Releases

- 24.04.2013 CMC statement on consideration of allegations concerning Scott Driscoll MP – statement detailing the CMC has commenced a co-operative misconduct investigation with the Queensland Police Service into allegations including official misconduct and fraud.
- 05.04.2013 CMC statement – in response to the Parliamentary Crime and Misconduct Committee’s report and recommendations arising from its inquiry into the CMC’s release and destruction of Fitzgerald Inquiry documents.
- 03.04.2013 CMC statement – in response to recommendations contained in an executive summary of a report by an expert advisory panel established by the Attorney-General to review the *Crime and Misconduct Act 2001*.
- 26.03.2013 CMC criminal paedophilia investigations reveal relentless threat of online predators – media release alerting parents to the threat of internet-based paedophiles in the wake of two successful criminal paedophilia prosecutions on the strength of evidence provided by Cerberus investigations.
- 19.03.2013 CMC assessment of a complaint against Scott Driscoll MP – statement confirming that the CMC received a referral from the Department of Communities, Child Safety and Disability Services in November 2012 concerning alleged official misconduct against the State Member for Redcliffe, and that the CMC assessed the matter as not falling within the CMC’s jurisdiction. The statement also outlined that the CMC is currently assessing all new relevant information as to whether it requires any further action by the CMC.
- 19.03.2013 CMC statement – announcing the CMC has concluded that a complaint against Peter Costello falls outside the CMC’s jurisdiction, resulting in a decision to take no further action.
- 08.03.2013 Statement from CMC Chairperson Ross Martin SC – statement of the Chairperson’s decision to take a leave of absence as the first step towards ill-health retirement. The statement was subsequently updated to include information about a standing delegation allowing for the Assistant Commissioner, Misconduct, or two of the CMC’s four part-time Commissioners to assume the role of Acting Chairperson if required; and finally, to note Mr Martin’s formal resignation (tendered 3 April) as the final step of the process.
- 06.03.2013 CMC statement – outlining that the CMC has, as a result of inquiries from *The Australian*, become aware of an administrative oversight concerning public access to certain Fitzgerald Inquiry records.
- 08.02.2013 CMC escalates readiness to assist police solve violent crimes involving the most vulnerable – Media release outlining the Crime Reference Committee’s approval of a new general referral allowing the CMC to respond rapidly to request for assistance with investigations into violent crimes involving vulnerable victims.

## Media Interviews

- 26.03.2013 Detective Inspector Lance Vercoe, Operations Coordinator, CMC Crime Operations: interview with ABC Radio News following media release about two successful prosecutions arising from the CMC’s Cerberus investigations targeting internet-based criminal paedophilia.
- 08.03.2013 Chairperson, Ross Martin SC: announcement of his decision to take a leave of absence as the first step towards ill-health retirement. Media in attendance included: AAP, Brisbane Times, *The Australian*, *The Courier-Mail*, Channel 7 News; Channel 9 News; ABC TV and Radio News and *7.30 Queensland*.
- 06.03.2013 Assistant Commissioner Crime, Kathleen Florian: interview with Brisbane Times about the CMC’s strategic intelligence report *Illicit drug markets in Queensland* as part of a Brisbane Times series of feature articles on Brisbane’s drug scene.
- 06.03.2013 Chairperson, Ross Martin SC: interviews following an article in *The Australian* related to the CMC’s release, in error, of sensitive Fitzgerald Inquiry records. The interviews followed the CMC’s media statement and included ABC Radio 612 Mornings with Steve Austin; a group interview with Channel 7 News, Channel 10 News and AAP; an interview with *Brisbane Times*; and an interview with *The Australian*.
- 08.02.2013 Assistant Commissioner Crime, Kathleen Florian: interview with AAP about the introduction of a new general referral relating to violent crimes against vulnerable victims.



# Right to Information

Right to Information Act 2009 (RTI Act); Information Privacy Act 2009 (IP Act)

## Details of Access, Amendment & Review Applications Received, Decisions Made

### SUMMARY OF APPLICATIONS

01.02.2013 to 31.03.2013 (current reporting period)

Application Type	Applications			Reviews			
	Total Received	Decisions Made <sup>1</sup>	Under Consideration	Internal		External	
				Received	Finalised	Lodged	Finalised
RTI	5	6	2	0	0	1	0
IP (access)	3	1	3	0	0	0	0
IP (amend)	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>8</b>	<b>7</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>

### SUMMARY OF APPLICATIONS

01.07.09 to 31.03.2013 (since commencement of RTI and IP Acts)

Application Type	Applications			Reviews			
	Total Received	Decisions Made <sup>2</sup>	Still Under Consideration	Internal Review		External Reviews	
				Received	Finalised	Lodged	Finalised
RTI	71	61	2	0	0	7	6
IP (access)	142	140	3	3	2	7	7
IP (amend) <sup>3</sup>	4	4	0	0	0	0	0
<b>TOTAL</b>	<b>217</b>	<b>205</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>14</b>	<b>13</b>

### ANALYSIS OF DECISIONS MADE ON ACCESS APPLICATIONS SINCE 1.07.09

Application Type	Form of Access			Access Refused		Applications Not Dealt With			Total Decisions (excludes amendment)
	Full	Partial	Refusal all exempt	No docs located	Acts not apply	Fee Not Paid	Lapsed/ Withdrawn	Transfer	
RTI	18	13	11	3	0	11	5		61
IP <sup>4</sup>	60	26	19	21	1	n/a	13		140
<b>Total</b>	<b>78</b>	<b>39</b>	<b>30</b>	<b>24</b>	<b>1</b>	<b>11</b>	<b>18</b>		<b>201</b>

**NOTES:** On 1 July 2009 the *Right to Information Act 2009* and the *Information Privacy Act 2009* replaced the *Freedom of Information Act 1992*.

- 1 Total decisions made may relate to applications received outside the reporting period.
- 2 Total applications received will not necessarily equal the sum of decisions made and applications under consideration. This is due to the fact that applications may be withdrawn prior to a decision being made.
- 3 A person has a right under and subject to the *Information Privacy Act 2009* to amend their personal information if inaccurate, incomplete, out of date or misleading. Three applications to amend were refused, one was granted.
- 4 One further application for access concerned a 'healthcare decision', and under section 92(2) of the *Information Privacy Act 2009*, the Chairperson directed that access be determined by a nominated healthcare professional.