9. Misconduct Tribunals

The 1991/92 financial year represents the first full year of the Tribunals' operations. During that period eight matters in the original jurisdiction and nine matters in the appellate jurisdiction were heard. With the move to new premises in February 1992 the Misconduct Tribunals acquired more suitable accommodation and strengthened their independent identity.

Legislation and History

The Fitzgerald Report recommended the establishment of Misconduct Tribunals to review decisions on disciplinary matters within the QPS, and to make original administrative decisions in relation to allegations of official misconduct on the part of police and such other officials as may be made subject to it by Order-in-Council.

The Misconduct Tribunals are an organisational unit established under the Act. They are independent of the QPS and other units of public administration. Members of the Tribunals must not hold office in any unit of public administration (other than an office held ex officio) or in the Commission.

A Tribunal is constituted by one member nominated by the Chairperson of the Commission to hear and determine a matter or a group of matters. To date, all sittings of the Tribunals have been conducted in Brisbane; however, the Tribunals may sit anywhere in the State. A Tribunal hearing is open to the public.

The Commission has taken steps to ensure that the Tribunals in fact operate independently. These steps have included:

- providing them administrative support through the Office of General Counsel rather than the OMD;
- establishing them in premises separate from the Commission's offices; and
- appointing counsel to assist, either from the Office of General Counsel or the private bar.

Jurisdiction

The Tribunals have original jurisdiction to investigate and determine every charge of a disciplinary nature of official misconduct made against a "prescribed person" and appellate jurisdiction to review a decision (other than that of a Court or Misconduct Tribunal) made in respect of a disciplinary charge of misconduct against a "prescribed person".

The Act prescribes only one class of person to be subject to the Misconduct Tribunals, namely, members of the QPS. Other persons who hold appointments in a unit of public administration must be so declared by Order-in-Council. To date, only two Orders-in-Council have been made declaring certain appointments to be subject to the jurisdiction of the Tribunals.

Panel of Members

Currently, 10 lawyers constitute the panel of members.

In September 1991, Mr L Boccabella, Barrister-at-Law, was re-appointed to the panel. Mr C F Bagley and Mr R N Chesterman QC resigned in May and June 1992, respectively.

Appendix H lists appointments and resignations to and from the Tribunals.

Management and Staffing

Administrative support to the Tribunals is provided by the Registrar, who is also Secretary to the Commissioner for Police Service Reviews, assisted by an administrative officer and two support officers.

In February 1992 the Registry relocated to new premises on the 6th Level, MLC Court, 15-23 Adelaide Street, Brisbane, where two hearing rooms are provided.
Legislative Change

In May 1992, the Act was amended to extend the grounds of appeal for a person aggrieved by a decision of a Misconduct Tribunal exercising original jurisdiction. More specific details of that legislative change are given in Chapter 13 of this report.

Future Directions

As foreshadowed in the Commission's 1990/91 Annual Report, in November last year the Commission made a number of recommendations to the PCJC to enhance the independence of the Tribunals and to ensure that they do not become overly legalistic.

On 3 December 1991, the PCJC tabled the review of its own operations and that of the Commission. As regards the Tribunals, the PCJC made the following recommendation:

The Committee endorses the recommendation of the Criminal Justice Commission that the Misconduct Tribunals should be constituted under their own separate legislation and recommends that the legislation should provide for the accountability of the Tribunals to the Department of Justice (administratively) and be monitored and reviewed by this Committee. The Committee also recommends that the Tribunals should have a discretion to conduct appeals from disciplinary decisions of the Deputy Commissioner of the Police Service either by way of re-hearing or review of the original decision [Recommendation 23].

On 25 June 1992, the PCJC conducted a public hearing to consider certain allegations made by Mr R N Chesterman QC, who resigned from the panel of members on 22 June 1992. During that hearing, the Chairperson of the PCJC foreshadowed that in the report on its investigations into those allegations, the PCJC would address the issues of the Tribunals' structures and procedures.
10. Commissioner for Police Service Reviews

Role and Functions

The Commissioner for Police Service Reviews (the Review Commissioner) hears applications under the Police Service Administration Act (the PSA Act) and the Police Service (Review of Decisions) Regulations 1990 by members of the QPS who are aggrieved by decisions relating to:

- promotions,
- transfers,
- stand down or suspensions,
- dismissals (other than a dismissal pursuant to a finding of misconduct),
- imposition of a disciplinary sanction (other than one imposed pursuant to a finding of misconduct or official misconduct), and
- appointment of an officer as a staff member.

A review is an administrative proceeding of a non-adversarial nature. Proceedings on a review are simple and informal, and legal representation is not permitted to any person concerned in a review.

A Review Commissioner is empowered only to make recommendations to the Commissioner of the Police Service. However, if the Commissioner of the Police Service does not accept the recommendation, he or she is required to provide a brief summary of reasons to the Review Commissioner and the parties involved in the review. Of the 47 recommendations made setting aside or varying the original decision, the Commissioner of the Police Service has not accepted four of those recommendations. The Commissioner has yet to advise his decision on 18.

Depending on the location of the parties, reviews are conducted either by the parties being physically present or by telephone conference facility. In fairness to both officers where one is stationed outside the south-east corner of the State, the hearing normally takes place by teleconference.

Commissioners

By virtue of s. 14 of the PSA Act, the Chairperson of the Criminal Justice Commission is empowered to nominate any member of the Commission as a Review Commissioner. A Review Commissioner is therefore independent of the QPS. Dr Janet Irwin and Mr John Kelly have been so nominated.

Staffing and Accommodation

Administrative support to the Review Commissioners is provided by the Secretary, who is also Registrar of the Misconduct Tribunals, assisted by an administrative officer and two secretarial support officers.

In February 1992 the Office of the Review Commissioner and the Registry of the Misconduct Tribunals relocated to new premises on the 6th Level, MLC Court, 15-23 Adelaide Street, Brisbane.

Problems Encountered and Initiatives Taken

To minimise inconvenience and uncertainty to officers, every effort is made to ensure applications for review are heard expeditiously. On the lodging of an application by an aggrieved officer, a report is sought from the panel convenor on the selection process and the reasons for the promotion or transfer (as the case may be) of the officer. When this report is received, a copy is furnished to both officers involved in the review and a hearing date is scheduled soon after. There have been a number of occasions when reports have not been submitted by the due date, with resulting delays in the hearing of the applications. Quite simply, the more quickly the reports are submitted, the more quickly the Review Commissioners can dispose of the applications.

The Secretary, in conjunction with the police officers assisting the Review Commissioner, regularly monitors the progress of the reports to ensure their timely completion.
Despite the fact that the present system of review has been in operation since June 1990, some police

### Table 4: Types of Decisions Lodged with the Commissioner for Police Service Reviews

<table>
<thead>
<tr>
<th>Type of Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotion</td>
<td>524</td>
</tr>
<tr>
<td>Transfer</td>
<td>92</td>
</tr>
<tr>
<td>Stand Down or Suspend</td>
<td>25</td>
</tr>
<tr>
<td>Dismissal</td>
<td>1</td>
</tr>
<tr>
<td>Disciplinary Sanction</td>
<td>25</td>
</tr>
<tr>
<td>Appointment as a Staff Member</td>
<td>0</td>
</tr>
<tr>
<td>Unapplied for Transfer</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total Number of Reviews Lodged</strong></td>
<td><strong>669</strong></td>
</tr>
</tbody>
</table>

officers seem unaware of the nature and the requirements of the review process. Every effort is made by the Secretary and his staff to ensure officers clearly understand the process. To this end, officers are invited to contact the Secretary and his staff to discuss any concerns they may have. A written commentary addressing the most asked questions is placed with the panel convenor's report and sent to the officers involved in the review.

The Review Commissioners seek to ensure that review procedures are streamlined in order to provide a quick, simple and fair review process. The Review Commissioners currently serve as members of a QPS committee reviewing the selection, promotion and review processes. As the present system of merit-based promotion has been operating since June 1990, this review is timely.

### Review of Workload

The overwhelming majority of applications lodged with the Commissioner for Police Service Reviews deal with promotion and transfer. While the workload has been considerable, the Review Commissioners have generally been able to hear applications within a few weeks of the parties receiving the panel's report. Generally, each Review Commissioner hears applications once a week.

The Review Commissioners wish to record their gratitude to Inspector P P Mewburn and Acting Snr Sgt R A Evans of the QPS, the officers assisting the Review Commissioners, for their courtesy, diligence and professionalism while fulfilling that duty.

The Review Commissioners also wish to thank the police officers who attended on review hearings for their co-operation, courtesy and professional approach to their duties.

During the 1991/92 financial year, 669 applications were lodged with the Commissioner for Police Service Reviews. Table 4 describes the types of decisions lodged during that period. Table 5 shows the status of those applications at the close of the financial year.

### Table 5: Status of Applications Lodged with the Commissioner for Police Service Reviews

<table>
<thead>
<tr>
<th>Status</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matters Heard</td>
<td></td>
</tr>
<tr>
<td>Affirmed</td>
<td>200</td>
</tr>
<tr>
<td>Set Aside/Varied *</td>
<td>47</td>
</tr>
<tr>
<td>Awaiting Decision</td>
<td>5</td>
</tr>
<tr>
<td>Matters Withdrawn</td>
<td>276</td>
</tr>
<tr>
<td>Matters Not Within Jurisdiction/Received out of Time</td>
<td>6</td>
</tr>
<tr>
<td>Matters Awaiting Hearing **</td>
<td>135</td>
</tr>
<tr>
<td><strong>Total Number of Reviews Lodged</strong></td>
<td><strong>669</strong></td>
</tr>
</tbody>
</table>
11. Human Resources

Staffing Overview

Although there has been no increase in the overall staff establishment for more than a year, the distribution of staff between Divisions has changed over the past 12 months. As shown in Table 6, the establishment numbers of both the Intelligence Division and the OMD have risen over the past year.

Commission staff are engaged in a wide range of professional, operational, administrative, technical and managerial activities. Given the nature of the Commission’s work, there will always be a strong representation of police officers and lawyers on staff. Ex-police personnel have a strong presence among civilian personnel, and QPS personnel are heavily involved in the Commission’s operations. However, a variety of backgrounds and disciplines are represented in the research, investigatory and intelligence gathering areas, which enables a multi-disciplinary approach to many issues. The range of professions at the Commission is represented in Table 7.

Table 6: Commission Establishment

<table>
<thead>
<tr>
<th>Division</th>
<th>Establishment 30 June 1991</th>
<th>Establishment 30 June 1992</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Male</td>
</tr>
<tr>
<td>Executive</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>General Counsel &amp; Misconduct Tribunals</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Official Misconduct</td>
<td>120</td>
<td>134</td>
</tr>
<tr>
<td>Operations &amp; Witness Protection</td>
<td>32</td>
<td>29</td>
</tr>
<tr>
<td>Research &amp; Co-ordination</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Intelligence</td>
<td>19</td>
<td>24</td>
</tr>
<tr>
<td>Corporate Services</td>
<td>60</td>
<td>43</td>
</tr>
<tr>
<td>Total</td>
<td>263</td>
<td>263</td>
</tr>
</tbody>
</table>

* Note: Because there were six establishment vacancies in the Commission on 30 June 1992, total M & F will not sum to 263 establishment number.

Table 7: Professions Represented in the Commission’s Establishment

<table>
<thead>
<tr>
<th>Division</th>
<th>Law</th>
<th>Accountancy</th>
<th>Social Science</th>
<th>Admin.</th>
<th>Police</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>General Counsel &amp; Misconduct Tribunals</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>11</td>
</tr>
<tr>
<td>Official Misconduct</td>
<td>18</td>
<td>8</td>
<td>1</td>
<td>28</td>
<td>67</td>
<td>12</td>
<td>134</td>
</tr>
<tr>
<td>Operations &amp; Witness Protection</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>25</td>
<td>-</td>
<td>29</td>
</tr>
<tr>
<td>Research &amp; Co-ordination</td>
<td>4</td>
<td>-</td>
<td>7</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>17</td>
</tr>
<tr>
<td>Intelligence</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>9</td>
<td>-</td>
<td>15</td>
<td>24</td>
</tr>
<tr>
<td>Corporate Services</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>41</td>
<td>-</td>
<td>-</td>
<td>43</td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>9</td>
<td>9</td>
<td>97</td>
<td>92</td>
<td>27</td>
<td>263</td>
</tr>
</tbody>
</table>

* Includes civilian investigators and intelligence analysts
Performance Assessment, Training and Development

Performance Assessment

The Commission has developed a Performance Planning and Review Scheme, which has been trialled twice to ensure applicability and appropriateness to the needs of both staff and the Commission—first, using employees in a single Division, and second, using a cross-section of employees from each of the six Divisions. Introductory seminars will shortly commence for implementation of the scheme throughout the Commission.

Training

To enhance individual job performance and overall productivity, the Commission has developed or sponsored in-house seminars on wordprocessing and spreadsheet software, report-writing, and written communication. Staff have also been encouraged to attend a wide range of workshops, conferences and seminars run by government agencies and professional associations. In addition, the Commission supports the training opportunities afforded to seconded members of the QPS.

The implementation of the Performance Planning and Review Scheme will enhance the Commission’s ability to ensure training and development is offered to staff on an equitable and more individually focused basis.

Expenditure on training during the year exceeded the minimum of one percent of annual payroll required under the Training Guarantee legislation. During the 1991/92 financial year, civilian Commission staff spent a total of 319 person days in training courses. During this period, training for police personnel was largely co-ordinated by the QPS. For the 1992/93 financial year, training for all Commission personnel will be co-ordinated through the Commission’s Personnel Services Section.

Code of Conduct

The Commission’s staff work in a politically and legally sensitive environment. The Commission’s code of conduct is being finalised by a working party through consultation with employees and senior management. It will provide staff with clear behavioural expectations to meet the requirements of their situations.

Equal Employment Opportunity

The Commission endorses the principles of Equal Employment Opportunity (EEO) and will be developing an EEO Management Plan consistent with provisions of the Equal Opportunity in Public Sector Employment Act 1992. The plan will provide profiles of EEO target groups and outline their projected access to training and progress within the Commission. Table 6 includes an analysis of Commission staff as of 30 June 1992 by gender.

Union Access

The Commission is not subject to the provisions of any Industrial Award or Agreement. However, as a responsible employer, the Commission offers conditions of employment commensurate with those in the public service generally.

Representatives of public sector and police unions have visited the Commission’s premises and made their services available to interested staff.

On 19 February 1992, the Executive Management group endorsed adoption of a grievance procedure to ensure fair treatment of all Commission employees. This procedure will ensure that employees are treated fairly and not subject to arbitrary or capricious acts or decisions. Employees who believe they have been disadvantaged by an administrative decision or suffered as a result of any unfair practice have an avenue through which they can seek to have the situation redressed.
Occupational Health and Safety

The Commission is mindful of its responsibilities to provide a safe and healthy work environment. Since its establishment, the Commission has implemented a number of initiatives, including first-aid training by the Queensland Ambulance Service and, most recently, the engagement of a group of prominent health professionals to develop a program to assist staff in identifying and coping with symptoms of work-related stress. The commencement of this program was welcomed by staff. Implementation of the report’s recommendations has begun.

Commission staff have also attended training provided by the QPS which focuses on the internal delivery of welfare services.
12. Reform of the Queensland Police Service

The Fitzgerald Report made a large number of recommendations for the reform of the QPS in two broad areas: organisation and management; and discipline. The Report clearly described a transitional phase of approximately three years, during which major initiatives for reform were to be introduced. The major reforms proposed were:

- a new organisational structure with as few organisational levels as practicable between the Commissioner and operational police officers;
- a regional basis for operational activities with increased levels of authority and responsibility;
- adoption of a policy of civilianisation, whereby all positions not requiring police powers were to be filled by civilians;
- progressive abolition of specialised units;
- introduction of a professionally designed recruitment process, and the development of a suitable recruit education and training program; and
- abolition of the Police Department Internal Investigation Section and the Police Complaints Tribunal.

Role and Functions of the Commission

The Fitzgerald Report’s recommendation that the Commission be given the responsibility of overseeing reform of the QPS found expression in s.214(1)(a) of the Act, which requires the Commission to continually monitor, review, co-ordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice.

Among the Commission’s responsibilities, two that directly concern the reform of the QPS are:

- monitoring the performance of the Police Service with a view to ensuring that the most appropriate policing methods are being used, consistently with trends in the nature and incidence of crime, and to ensuring the ability of the Police Service to respond to those trends (s.215(g)); and
- overseeing reform of the Police Service (s.215(i)).

Furthermore, under s.245(2)(f) of the Act, the Research and Coordination Division was given a mandate to review on a continuing basis the effectiveness of programs and methods of the Police Service, in particular in relation to:

- compliance by the Police Service with the Commission’s recommendations or policy instructions;
- community policing;
- prevention of crime; and
- matters affecting the selection, recruitment, training and career progression of members of the Police Service and their supporting staff.

The Monitoring Process

On 3 July 1989, the day the Fitzgerald Report was released, the Queensland Government constituted an Implementation Unit comprising of a handful of selected police officers and private consultants. The Unit was to report directly to the Minister for Police and Emergency Services. In early September 1990 this unit was abolished. The QPS then created its own Implementation Unit. Pursuant to its responsibility under the Act for monitoring the implementation of reform, the Research and Coordination Division worked with this Unit until it too was disbanded in early 1992.

To ensure that the implementation of reform received the support of the QPS executive, a joint implementation sub-committee was formed comprising the Deputy Commissioner of Police (Support Services) and the Director of Policy Research and Evaluation from the QPS, and the Director of the Research and Coordination...
Division and the Principal Research Officer from the Commission (later, the Senior Adviser to the Minister for Police and Emergency Services joined the sub-committee). This sub-committee was to meet on a regular basis. In addition, the Commissioner of the Police Service and the Chairperson of the Commission agreed to meet quarterly with the Minister for Police and Emergency Services.

It must be remembered that the Fitzgerald reforms ranged from relatively simple changes in procedure to more complex efforts involving amendments to legislation and changes to lines of authority and reporting obligations. Some reforms could be implemented very quickly, while it was clear that others would necessarily take longer, perhaps even longer than the initial three-year transition period.

It is perhaps naïve to expect that the process of implementation will be a smooth one. Some of the recommendations may have serious resource implications; others involve substantial attitudinal changes, and still others may appear to contradict many years of established policing practices. Fitzgerald QC recognised that changes introduced in the transitional phase would not complete the process of reform and that effective improvements in the QPS would take time and patience. Furthermore, the Commissioner of the day may wish to modify recommendations to bring them into accord with his or her approach to administration and management.

One good example of the differences between the form of the Fitzgerald recommendations and the form in which they were implemented is the structure and organisation of the QPS. In proposing the restructuring of the QPS, the Fitzgerald Report was very precise. It recommended that the new structure provide for:

- as few organisational levels as practicable between the Commissioner and operational police officers to facilitate communication, expedite decision making, and ensure that policies are relevant. Five broad bands of responsibility with several grades of salary within each band equating to constables, sergeants, inspectors, superintendents, and commanders are proposed (Recommendation 1(a));
- three commands, viz., Regions, Task Force and Support Services (Recommendation 2(b));
- eight Regional Commanders with full authority and accountability for managing police regions (Recommendation 2(d));
- the position of Commander of the Task Force Division to be established in Head Office at a level equivalent to Regional Commanders (Recommendation 2(f));
- another Commander (Support Services) to co-ordinate the provision of administrative, personnel, financial and operational support (Recommendation 2(g));
- the Commander (Support Services) to be a police officer equivalent in status to the other Commanders. The bulk of the units and Directors of major divisions under this Commander should comprise civilian personnel (Recommendation 2(h)); and
- an inspectorate with review responsibility to report directly to the Commissioner (Recommendation 2(i)).

However, the restructured QPS is significantly different from that recommended by the Report: there are more than five broad bands of responsibility with several grades; the Commander (Support Services) is not equal in status to the other Commanders (indeed, he is a Deputy Commissioner); there is an additional position of a Deputy Commissioner (Operations); and the inspectorate, as established, does not report directly to the Commissioner, but to the Deputy Commissioner. This example is not intended as a criticism but, rather, to illustrate the need for careful assessment of the implementation of reforms.
It is important that the implementation of each reform or recommendation is carefully scrutinised. Problems during the implementation process may be solved by ad hoc solutions that fail to fully realise the intended change, despite the claims of success.

In early 1992 the PCJC asked the Commission to prepare a full report on the status of implementation of police reform. The Commission has agreed to do so and a detailed status report is expected to be submitted during the first half of 1993. This report, besides providing a full account of reform, will also systemically evaluate certain aspects of QPS administration, organisation and operation (see Chapter 4).

The Commission is not only involved in monitoring QPS reforms but also actively participates in initiating programs under the reform agenda. This participation is not limited to the Research and Co-ordination Division. It extends to the Commission’s Official Misconduct, Intelligence and Corporate Services Divisions, and the Office of General Counsel.

Commission representatives sit on such committees as:

- the Police Education Advisory Council;
- the Police Prosecutions Functions Working Party;
- the QPS Review of Policy and Procedures Committee;
- the QPS Research and Ethics Committee; and
- the Committee to Review the Police Service Administration Act.

The Commission also contributes to the development of policies and procedures. For example, the Complaints Section of the OMD makes recommendations for changes in police practices as a result of its investigations (see Chapter 3); the Intelligence Division suggests new procedures and practices with respect to the collection of intelligence through its monitoring of the BCIQ (see Chapter 5); and the Office of General Counsel has provided a legal adviser to assist in the implementation of new QPS disciplinary procedures and is participating in the review of the Police Service Administration Act (see Chapter 8).

The Research and Co-ordination Division has loaned equipment to the QPS; provided funding for the evaluation of QPS programs; is currently developing new strategies in community policing; and has actively participated in evaluating police programs (see Chapter 4).

**Problems Encountered and Initiatives Taken**

A major problem encountered in the monitoring of the QPS reform has been the lack of or unavailability of records. Since the handing down of the Fitzgerald Report on 3 July 1989, the level of activity in the QPS has been hectic. The QPS faced the unenviable task of implementing the recommended reforms—some of which required a significant commitment of human and financial resources—and, at the same time, carrying out all the functions of policing in the State. During this period, the Commission believes that the business of documenting steps taken in the reform process may not have received the attention it should have and, as a consequence, the rationale for deviating from the Fitzgerald Report’s recommendations has not been well-documented. For example, no information is available to the Commission on why the QPS introduced nine bands of responsibility as opposed to the five recommended in the Report.

Compounding the apparent lack of documentation is the impact of disbanding the Implementation Unit. Those records the QPS does have appear to be dispersed across the State in various units of the Service, rather than consolidated into a single holding.

In an attempt to ascertain the location of records and gather and verify information, the Research
Reform of the Queensland Police Service

and Co-ordination Division has begun contacting individuals and agencies connected with the Fitzgerald Commission of Inquiry, members of the former QPS implementation units, and other serving and retired police officers. Division staff have begun to examine communications between the Minister for Police and Emergency Services and the Commissioner of the Police Service that are tabled annually in the Parliament.

Future Directions

Fitzgerald QC said that even though most of the recommendations could be implemented during a three-year transition period, that period would represent only the beginning of the reform process. It would take several years before the real impact of the reforms was apparent, because the impact of many would be determined by changes in police culture.

The nature of this “police culture” should perhaps be elaborated. It has several aspects, some of which are positive, some negative and some neutral. For the purpose of completing the reform process, it is important that the negative aspects be overcome and the positive aspects reinforced. Ensuring that modifications to the Fitzgerald reform program do not, consciously or unconsciously, undermine the process of cultural change where that change is necessary will be an important part of the Commission’s task.

Very few, if any, of the Fitzgerald reforms stand in isolation. The impact of one reform is often predicated on the implementation of others. Preliminary evidence at hand through the Commission’s current evaluation project suggests that some reforms have been implemented unchanged, some with modification, and others in a form quite different to that intended. This suggests that while monitoring the implementation of reforms during the transition period may have been challenging, measuring their impact and effectiveness will be both difficult and involved.
13. Legal Issues

Criminal Justice Act 1989

The Commission’s first annual report referred to a number of amendments to the Act which the Commission considered necessary. As stated in the 1990/91 Annual Report, the Commission wrote to the Premier in September 1990 seeking these and other amendments to the Act. The Premier responded that the proposed amendments should be considered together and suggested that they be first considered by the PCJC.

The proposals were submitted to the PCJC in July 1991 as part of its review of the Commission. This was followed by the submission on 30 September 1991 of a draft Act incorporating the proposals. The draft Act is reproduced in full in Part B of the PCJC’s Report No 13. Some of the proposals were realised in the Criminal Justice Amendment Act 1992.

The Act was also amended during this period by the Appointments (Clarification of Validity) Act 1991 and the Criminal Justice Amendment Act (No 2) 1992. The nature of the amendments is discussed below. The Commission is appreciative of the Office of Cabinet and the Parliamentary Counsel for consulting it in relation to the form of the amendments.

The Commission looks forward to the outstanding legislative amendments being made as a matter of urgency. As has been observed, the majority are of a technical nature and are based on experience with the legislation to date. The amendments are necessary to fine tune the Act by removing anomalies and to clarify the meaning of provisions. They will greatly facilitate the effective discharge of the Commission’s functions and responsibilities.

Amendments to the Criminal Justice Act

During the period of this report, the Act was amended three times.

Appointments (Clarification of Validity) Act 1991

This Act, which was assented to on 28 August 1991, clarifies the validity of the appointment of the first Chairperson of the Commission and removes an element of doubt as to the exact term of appointment. The Act retrospectively fixes the term of the appointment as three years. However, the authority of the Governor-in-Council under the Act to otherwise set the term is not overridden.

The amendments retrospectively ensure the functioning of the Commission is not impaired through appointment of any Commissioner to a unit of public administration.

To ensure that an Acting Commissioner, including an Acting Chairperson, may be appointed expeditiously whenever required, the amendments provide for standing or contingent “acting” arrangements to be put in place. Lengthy advertising and consultation procedures which apply to selection and appointment of Commissioners are generally inappropriate in these circumstances and are not mandatory.

The amendments provide for a Commissioner to act as Chairperson, or for a person to act as Commissioner should the incumbent be suffering an incapacity or be absent from the State or for any other reason.

The amendments enable the Chairperson of the Commission to concurrently hold the position with that of Chairperson of the continuing Commission of Inquiry.

This involved amendments to ss. 22, 24, 27, 28 and 210 of the Act.

Criminal Justice Amendment Act 1992

The most significant aspect of this Act, which was assented to on 13 May 1992, is to remove the obligation on the Commission to investigate all complaints and information it receives in relation
to suspected misconduct by members of the QPS and official misconduct by holders of appointments in other units of public administration. It invests the Commission with discretions whether or not to investigate a complaint, information or matter communicated to the Complaints Section or to continue such an investigation. In addition, the Complaints Section must not investigate a complaint or information if, in the opinion of the Chief Officer of the Section, it is frivolous or vexatious or is an anonymous complaint or information that lacks substance or credibility.

This is achieved by amendments to subsection 2.202(c) (which is renumbered as 2.202(d)) and s. 2.29 of the Act.

The new s. 2.29:

- confers a discretion on the Complaints Section to discontinue an investigation.

- provides the Complaints Section with a discretion to refer a complaint, information or matter to the principal officer of a unit of public administration, where in the opinion of the Chief Officer, it involves, or may involve, cause for taking disciplinary action (other than official misconduct) by the principal officer against a person holding an appointment in the unit. This enables the Commission to have the principal officer investigate the complaint, information or matter on its behalf.

- requires the Complaints Section to submit a complaint, information or matter to the Director of the OMD if there is prima facie evidence to support a disciplinary charge of official misconduct or a criminal charge.

- allows the Director of the OMD to give directions with respect to the investigation by or on behalf of the Complaints Section of complaints, information or matters, including decisions to investigate or not to investigate. This is to ensure consistency in the exercise of discretions and the conduct of investigations in accordance with the Section.

allows the Commission to issue guidelines in respect of such investigations by or on behalf of the Complaints Section and thereby ensures that the Commission retains ultimate responsibility for the conduct of investigations.

The Act formally recognises the position of the Chief Officer of the Complaints Section by providing for the appointment of such a person who is directly accountable to the Director of the OMD.

In addition, the Act makes technical amendments in relation to subsections 2.15(b)(ii), 2.202(d), 2.202(e) and 2.24(1)(a) to avoid unnecessary duplication, to remove errors in the initial legislation and otherwise clarify existing provisions.

Criminal Justice Amendment Act (No 2) 1992

The third set of amendments to the Act were assented to on 22 May 1992. They expanded the grounds of appeal to the Supreme Court from decisions of the Misconduct Tribunal exercising original jurisdiction to allow a Judge, at his or her own discretion, to examine whether the decision of the Misconduct Tribunal involves a factual error or cannot be supported having regard to the evidence and proceedings before the Tribunal or any new evidence which the Judge will allow to be heard on appeal.

Prior to this the grounds of appeal were limited to the denial of natural justice; error of law; and manifest excessiveness of penalty.

The Government decided that these grounds were too narrow in the context of the finding by the Misconduct Tribunal in Brighton v Neunham (OJ No 3 of 1992, 27 April 1992) of official misconduct by the Commissioner of the Police Service and its order that he be dismissed. The amendment, which involved s. 238 of the Act, was framed to ensure that all persons dissatisfied with previous decisions of the Misconduct Tribunal exercising original jurisdiction, and who would otherwise have been out of time to appeal on the new
grounds, were entitled to do so. The fact that any of these persons had already appealed on the existing grounds did not stop the person appealing on the new grounds.

Where the Judge grants leave to appeal on one or more of the new grounds, he or she may also order that part or all of the evidence given before the Misconduct Tribunal be heard again on the appeal. However, unless the Judge has made such an order, the appeal is to be decided on the evidence given before the Misconduct Tribunal.

The Judge is also given a discretion, which may be exercised either on the Judge's own initiative or following an application by a party to the appeal, to transfer the appeal to the District Court at any time after the appeal has been instituted. In such circumstances the District Court Judge is given all the powers that a Supreme Court Judge would have to decide the matter.

If the Judge allows the appeal on any ground except excessiveness of penalty, the Judge may either substitute his or her own decision for that of the Misconduct Tribunal, or send the matter back to the Misconduct Tribunal with directions on matters that the Judge considers are relevant to its disposal or may vary the Tribunal's decision.

Other Legislation

New Legislation Affecting the Commission

Freedom of Information Bill 1992

This legislation, which will take effect in the latter part of 1992, will give the community statutory rights of access to Commission documents, including policy documents.

As noted in the last annual report, the Commission supports this legislation. It did not seek a blanket exemption from its application. It suggested that the proposed legislation should contain a carefully drafted provision to enable each request to be considered on its merits. The proposed legislation contains exemptions from disclosure on which the Commission, together with any other agency to which the legislation applies, is entitled to rely on, where necessary, to protect the integrity and confidentiality of the discharge of its functions and responsibilities and its sources of information. In particular, it will ensure that the legislation is not used as a window into the Commission's investigative, intelligence and witness protection functions.

Judicial Review Act 1992

The Commission also supported this legislation, which is designed to streamline and simplify the judicial review of administration decisions. It imposes an obligation to provide reasons for such decisions to persons adversely affected. The Commission is subject to the legislation except in relation to providing reasons for decisions made by it in the discharge of its investigative, intelligence and witness protection functions. This is also to prevent the legislation being used to prejudice operations of the Commission. Other than this, the Commission sought no exemption from the legislation.

Legislative Amendments Affecting the Commission

Cash Transaction Reports Act 1988 (Cwth)

Amendments to this Act commenced on 21 September 1991. They enable the Director of the CTRA, now the AUSTRAC, to authorise the Commission to have access to CTRA information.

A Memorandum of Understanding was executed with the CTRA on 23 September 1991, restricting access to such information to nominated Commission staff. In conjunction with the CTRA, the Commission prepared guidelines for the use of CTRA information. The safeguards attached by the CTRA to the provision of this information includes logging all access.
Access to CTRA information has enhanced the Commission’s investigations into public sector corruption and major and organised crime.

**Financial Administration and Audit Act 1977**

Section 69 (Secrecy) of this Act is to be amended to ensure that the obligation on the Auditor-General to preserve secrecy does not prevent the Auditor-General disclosing information to, inter alia, the Commission.

This follows an amendment in June 1991 to Public Finance Standard 234(2) issued under that Act, to require accountable officers to report to the Commission losses which may have arisen from a cause that could constitute an offence under the Criminal Code or any other Act or law.

These amendments follow from the Commission’s submission to the EARC in response to the Issues Paper No 9, *Review of Public Sector Auditing in Queensland*.

**Proposed Legislative Amendment Affecting the Commission**

**Telecommunications (Interception) Act 1979 (Cwlth)**

In a discussion paper entitled *Review of the Telecommunications (Interception) Act 1979* issued in December 1991 by the Commonwealth Attorney-General’s Department, a QPS submission was reflected in a recommendation that the Commission be defined as an “eligible authority” which may, when the requirements of ss. 34 and 35 of that Act have been satisfied, be entitled to apply for warrants under the Act. These requirements include the enactment of complementary Queensland legislation, and a request by the State Premier to the Commonwealth Attorney-General for the declaration of the Commission as an “agency” and for such declaration to be made.

It is no longer necessary for the Telecommunications (Interception) Act to be amended to put the Commission in the same position as the Fitzgerald Commission of Inquiry to obtain Call Charge Record (CCR) information, as suggested in the 1990/91 Annual Report. This is because of the subsequently expressed view by the Attorney-General’s Department that CCR information derived on or after 1 July 1989, is not within the ambit of the Act’s operation. The Commission now receives this information subject to compliance with s. 88 of the *Telecommunications Act 1991* and Information Privacy Principle 11 of the *Privacy Act 1988*.

The Commission awaits the Commonwealth Government’s decision on the recommendation of the Attorney-General’s Department.

**Comments by the Commission Upon Queensland Legislation**

During the 1991/92 financial year, the Commission commented on many pieces of existing and proposed Queensland legislation, including:

- Police Service Administration Act 1990;
- Evidence Act 1977;
- Local Government Act 1936;
- Commission of Inquiry Act 1950;
- Invasion of Privacy Act 1971;
- Crimes (Confiscation of Profits) Act 1988;
- Chicken Meat Industry Committee Act 1976;
- Gaming Machine Act 1991;
- Draft Justices of the Peace and Commissioners for Declaration Bill;
- Proposed Local Authority Joint Enterprise Legislation Bill;
- Proposed Cash Transaction Reports Legislation;
- Penalties and Sentences Bill;
- Proposed Crime (Fraud) Bill;
In view of the unique nature of the Commission and its legislation, it is to be expected that judicial clarification of both legislative provisions and the Commission’s procedures will be necessary.

**Ainsworth and Anor v Criminal Justice Commission (F.C. 92/009)**

The applicants, whose business activities include the supply of gaming machines, complained that the Commission produced and furnished its *Report on Gaming Machine Concerns and Regulations* adversely to their reputations, without according them natural justice or, as it is now called, procedural fairness.

The applicants sought relief by way of mandamus and certiorari. The precise relief sought by way of certiorari was that the proceedings of the Commission be removed for the purpose of quashing all the findings relating to them in the report.

In addition, they sought a declaration that the Commission had failed to give them natural justice and to comply with its obligations under the Act.

The Queensland Full Court, in *The Queen v Criminal Justice Commission, Ex parte Ainsworth Nominees Pty Limited and Ainsworth* (OSC No. 28 of 1990), refused to grant this relief because it considered the course adopted by the Commission was not one which attracted a duty of fairness under the Act nor, in its view, was there a duty of fairness under the general law because the report did not affect any right, interest or legitimate expectation of the applicants. Finally, the Court held that, even if there was a duty of fairness, the case was not appropriate for the grant of relief.

On 9 April 1992, the High Court of Australia allowed an appeal from the Full Court decision and declared that, in reporting adversely to the applicants in its report, the Commission failed to observe the requirements of procedural fairness.

**National Witness Protection Bill**


**Taxation Administration Act 1953**

As stated in the last report, the Commission sought the Premier’s assistance to obtain an amendment to the *Income Tax Assessment Act* 1936 that would place the Commission in the same position as the Fitzgerald Commission of Inquiry with respect to the receipt of information from the Commissioner of Taxation.

However, because it seemed unlikely that the Commonwealth would agree to such an amendment, the Commission sought the Premier’s assistance to include the Commission within the definition of “law enforcement agency” so as to enable it to obtain such information under s. 3E of the *Taxation Administration Act* 1953. This would place it in the same position as the ICAC and the NSW Crime Commission.

**Litigation Involving Commission**

During the period of this report, the Commission was a party to the following litigation, in which decisions on important matters of principle concerning the discharge of its functions and responsibilities were made.
Legal Issues

However, the Court also refused to give relief by way of mandamus or certiorari. Accordingly, the report and its findings in relation to the applicants were not quashed.

A joint judgement was delivered by Mason CJ, Dawson, Toohey and Gaudron JJ. Brennan J delivered a separate judgement.

It is relevant that the High Court decided:

(i) “Proceedings” in s.317 of the Act was to be construed as including any step taken in the course of or in relation to the functions and responsibilities of the Commission, and is not confined to formal hearings held pursuant to s.217. But whether the case was approached on that basis or some narrower basis, a duty to act fairly was imposed on the Commission, either by s.321(2)(a) of the Act or by the general law. This duty required the Commission to act fairly in researching and generating proposals for law reform.

(ii) Business or commercial reputation was an interest attracting the protection of the rules of natural justice. This report adversely affected a legal right or interest such that the Commission was required to, but did not, proceed in a manner that was fair to the appellants.

In the matter of an application by Bruce Whiting (OS No 469 of 1992)

On 29 May 1992 G N Williams J in the Supreme Court of Queensland ruled, inter alia, that:

- s.323 of the Act requires a legal practitioner to obtain leave from the Commission to appear before it in an investigative hearing and

- the Commission has the power to decline to allow a particular lawyer to appear for a witness, if it forms the bona fide belief on reasonable grounds that to allow such representation would prejudice the investigation being carried out pursuant to the requirements of the Act.

Accordingly, he concluded that the Commission not erred in construing s.323, nor had it conducted an investigation unfairly in refusing to allow the same legal representatives to represent both potential witnesses and the person the subject of the Commission’s investigation under the Act.

An appeal has been lodged to the Queensland Court of Criminal Appeal in respect of this decision.

In the matter of an appeal of Noel Ronald Newham (OS No 484 and 489 of 1992)

On 22 June 1992, Moynihan J allowed an appeal by the Commissioner of the Police Service against the determination of the Misconduct Tribunal exercising original jurisdiction that he was guilty of official misconduct and its order that he be dismissed from the QPS on the basis that the Tribunal had erred in law in failing to satisfy itself that all requirements of the charge had been made out.

In the course of the decision, the Court rejected an argument that the Tribunal erred in applying the civil rather than the criminal standard of proof.

It considered that the requirement under s.2381A(b) of the Act that “leave” of a judge is required for an appeal to be heard on grounds of error of fact or that the decision cannot be supported having regard to the evidence and proceedings before the Tribunal, implied a consideration of something beyond a complaint on a ground which may be arguable.

In addition, the Court rejected an argument that the requirement of s.2251(d) of the Act that official misconduct constitutes or could constitute a disciplinary breach that constitutes reasonable grounds for the termination of a person’s services in a unit of public administration could only occur when there had been a breach of a provision of some disciplinary code or of a direction or order.
The requirement may, for example, be capable of being satisfied by misconduct in the terms of the Police Service Administration Act.

**Judicial Decisions Affecting the Commission**

**R v Blizzard, ex parte Downs (OSC 36/93; Q.L.R. 23/5/92)**

Downs, an officer of the QPS, was charged and found guilty of misconduct by a prescribed officer under the Police Service Administration Act. As a result he was dismissed from the Service.

Downs unsuccessfully applied to the Queensland Full Court for a writ of certiorari on the grounds that the misconduct charged against him constituted official misconduct, so that the jurisdiction of the prescribed officer was ousted by the Criminal Justice Act, and that he had been denied natural justice.

In the course of its decision, the Court held that the disciplinary jurisdiction of a prescribed officer under the Police Service Administration Act was not ousted unless and until a charge of official misconduct was brought before a Misconduct Tribunal.
14. Public Awareness

The Commission recognises that public education is a vital and important part of its continued success. There are three grounds for this view.

First, there has been a significant misunderstanding of the Commission’s role and function. Second, the Commission recognises that achieving long-lasting change, particularly attitudinal change, requires constant re-stating of the imperatives driving the calls for greater accountability. Third, as Fitzgerald QC warned, vested interests with a stake in seeing the old status quo restored have increasingly attacked the Commission and built a concerted campaign to rob the Commission of its independence and diminish its credibility. As Fitzgerald QC stated:

The media is able to be used by politicians, police officers and other public officials who wish to put out propaganda to advance their own interests and harm their enemies. A hunger for “leaks” and “scoops” (which sometimes precipitates the events which they predict) and some journalists’ relationships with the sources who provide them with information, can make it difficult for the media to maintain its independence and a critical stance.

The Commission has embarked on a campaign to lift its public profile and increase real understanding of the varied roles and functions of the Commission and its Divisions. The media liaison role has become increasingly pro-active, with major public launches of Commission publications and reports.

During the 1991/92 financial year, the Commission appointed a corruption prevention officer and initiated a broad-based education campaign that included radio and television advertisements, the conduct of major conferences and workshops, and an ongoing liaison across the public sector to raise awareness of corruption prevention strategies and programs.

Commission officers at many levels have engaged in extensive community outreach activity, making themselves available for speaking engagements and presenting papers at conferences and seminars (see Appendix F).

Media Relations

Raising public awareness of the Commission and its role to a large extent has meant increasing media operatives’ understanding of the structure and activities of the Commission in the hope that they will relay more accurate information to the public.

The Commission’s Media Liaison Office has handled thousands of calls from media outlets around the nation. While many calls dealt with specific investigations that are subject to the confidentiality provisions of the Criminal Justice Act, an increasing number of media enquiries focused on the Commission’s research activities and the acknowledged expertise of its personnel in law enforcement matters.

As media representatives have become more aware of the very broad span of the Commission’s activities, they have shown increased interest in the outcomes and products of such activities. For example, media representation at public hearings held by the Commission and scheduled media
Public Awareness

conferences has been much larger over the past 6-12 months.

Overall, despite the confidentiality and sensitivity of much of the Commission’s work, media representatives generally have been cognisant of the constraints operating in relation to those areas and have generally sought to conduct themselves with considerable professionalism in their dealings with the Commission.

Consistent with its policy of serving the people of Queensland throughout the State, the Commission has instituted regular media contacts with outlets outside the south-east corner.

In addition to regular briefings and a monthly report which is circulated to the media at large, the Commission disseminated 53 media statements during the 1991/92 financial year.