CRIMINAL JUSTICE COMMISSION

REPORT ON THE INVESTIGATION INTO THE COMPLAINT OF MR T. R. COOPER, MLA, LEADER OF THE OPPOSITION AGAINST THE HON. T. M. MACKENROTH, MLA, MINISTER FOR POLICE AND EMERGENCY SERVICES

JULY 1991
CRIMINAL JUSTICE COMMISSION
QUEENSLAND

The Hon Wayne Goss MLA
Premier and Minister for Economics & Trade
Development & Minister for the Arts
Parliament House
George Street
BRISBANE Q 4000

Mr Hon Jim Fouras MLA
Speaker of the Legislative Assembly
Parliament House
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Mr Peter Beattie MLA
Chairman
Parliamentary Criminal Justice Committee
Parliament House
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Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989–90, the Commission hereby furnishes to each of you its Report into the investigation of the complaint of Mr T R Cooper, MLA, Leader of the Opposition against the Hon T M Mackenroth, MLA, Minister for Police and Emergency Services concerning the use of a Government aircraft in April 1991.

Yours faithfully,

SIR MAX BINGHAM QC
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A. INTRODUCTION

BACKGROUND TO COMPLAINT

On 7 April 1991, Mr Philip Arthur Heath, MLA for Nundah, was reported as a missing person to the Queensland Police Service.

At 10.43pm on 7 April 1991, police issued a message in relation to Mr Heath, which stated that he had been reported missing by Ms Rachel Monaghan, whom the message described as Mr Heath's "secretary and de facto". The message stated that Ms Monaghan believed that Mr Heath may have been suicidal.

On 8 April 1991, a police message was sent to all news editors stating that police were anxious to locate Philip Arthur Heath, Labour Member for Nundah, who was a missing person. The message further stated that police were anxious to locate Mr Heath, but did not suspect foul play.

At 9.20pm on the evening of 8 April 1991, Mr Heath was located in Port Macquarie New South Wales, as a result of information provided earlier that day by a Queensland police officer to the effect that Mr Heath may have been in that area. Mr Heath was located and spoken to by Detective Sergeant R B Williams of the New South Wales Police Service, who persuaded Mr Heath to accompany him to the Port Macquarie Police Station so that Queensland police could be contacted about the matter.

Detective Williams contacted the duty officer of the Queensland Police Service Task Force at Brisbane and a message was passed to the Minister for Police and Emergency Services, the Honourable T Mackenrooth, that Mr Heath had been located in New South Wales. A decision was taken that Mr Mackenrooth, his private secretary Mr Gary Hannigan, and Mr Heath's father would fly to Port Macquarie in an aircraft owned by the State Government, for the purpose of speaking to Mr Heath.

Detective Sergeant Williams was informed of the proposed flight, and met Mr Mackenrooth and his party at the airport at 12.30 am on 9 April 1991. Mr Mackenrooth and members of his party subsequently met with Mr Heath, and a discussion took place. Mr Heath declined to return to Brisbane in the aircraft, which made the return flight later that morning.

On 9 April 1991, the Speaker of the Legislative Assembly, the Honourable J Fouras MLA, advised Parliament that he had received the resignation of Mr Heath, the Member for Nundah, "effective from 5.00pm on 5 April 1991".

On 11 April 1991, Mr Russell Cooper, MLA, Leader of the Opposition, made a complaint to the Criminal Justice Commission in relation to the Government aircraft being used to travel to the meeting with Mr Heath. On the same day, and in essentially the same terms as outlined in his letter to this Commission, Mr Cooper raised the matter in Parliament by questions without notice to Mr Mackenrooth and
to the Honourable W Goss MLA, Premier of Queensland. The Premier replied in
detail to Mr Cooper's questions in the House, and stated that he endorsed
Mr Mackenroth's actions.

ALLEGATION

Mr Cooper's letter of complaint to the Commission dated 11 April 1991 set out a
number of concerns in relation to the use by Mr Mackenroth of the Government
aircraft to travel to Port Macquarie to meet with Mr Heath. Essentially, Mr Cooper
alleged that as Mr Heath had resigned his public office effective from 5.00pm on
5 April 1991, the use of the aircraft amounted to the utilisation of public funds to
fly to the aid of a private citizen.

The issues identified by the Commission as being central to the allegation made by
Mr Cooper were:

- **Mr Heath's Status:** Was Mr Heath still the holder of a public office at
  the time of Mr Mackenroth's flight to Port Macquarie on 7 April 1991;
or

  Was Mr Heath, at the time of the flight, a private citizen by virtue of the
  forwarding of his resignation on 6 April 1991?

- **Mr Heath's Welfare:** Was there genuine concern regarding Mr Heath's
  welfare and health prior to the decision being taken to make the flight,
  and if so, was the concern reasonably based on the information which
  had been provided?

- **The Guidelines for use of Government Aircraft:** Was the use of the
  Government aircraft in the circumstances a breach of the guidelines
  issued by the Division of Aviation Services?

B. JURISDICTION OF THE CRIMINAL JUSTICE
COMMISSION

Under the **Criminal Justice Act 1989–1990**, the Criminal Justice Commission is
required to investigate all cases of alleged or suspected official misconduct by
persons holding appointments in Units of Public Administration (cf: Section
2.20(2)(e)(ii) **Criminal Justice Act**).

Section 1.4 of the Act provides that a "Unit of Public Administration" includes the
Legislative Assembly of the State of Queensland, and the Commission therefore has
jurisdiction to investigate any allegation of official misconduct against a member of
the Legislative Assembly.
Section 2.23(1) of the Act defines the general nature of "official misconduct". It provides, inter alia, that official misconduct is –

"(a) conduct of a person, whether or not he holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment therein;

(b) conduct of a person while he holds or held an appointment in a unit of public administration –

(i) that constitutes or involves the discharge of his functions or exercise of his powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial;

or

(ii) that constitutes or involves a breach of the trust placed in him by reason of his holding the appointment in a unit of public administration;

... and in any such case, constitutes or could constitute –

(d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration, a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person’s services in the unit of public administration;

(e) in the case of any other person, a criminal offence.

For the purposes of determining its jurisdiction to conduct the investigation into the allegation made by Mr Cooper, the Criminal Justice Commission found that Mr Mackenroth, as a Minister of the Crown and a member of the Legislative Assembly, was the holder of an appointment in a unit of public administration, in terms of the Act.

The Commission then considered, as a preliminary issue, whether Mr Mackenroth’s behaviour, if as alleged, could amount to official misconduct. The Commission concluded on the material before it that:

(i) Mr Mackenroth’s use of the aircraft in the circumstances outlined in the complaint could not amount to a criminal offence; and
(ii) His use of the aircraft could amount to either conduct which involved a discharge of functions or exercise of powers in a manner that was not honest or impartial; or conduct that constituted a breach of trust by a public official, which conduct in either case could constitute a disciplinary breach that would provide reasonable grounds for the termination of his services.

The Commission has formed the view that there is clear authority for the proposition that a Member of the Legislative Assembly may be expelled for certain acts of misconduct, as an incident of the Parliament's power to regulate its own constitution. This power is examined in detail in Erskine May's treatise on the Law, Privileges, Proceedings and Usage of Parliament. The following passage from that work refers to examples of a Member's conduct which may lead to expulsion:

"The expulsion by the House of Commons of one of its Members may be regarded as an example of the House's power to regulate its own constitution, though it is, for convenience, treated here as one of the methods of punishment at the disposal of the House. Members have been expelled as being in open rebellion; as having been guilty of forgery; of perjury; of frauds and breaches of trust; of misappropriation of public money; of conspiracy to defraud; of fraudulent conversion of property; of corruption in the administration of justice, or in public offices, or in the execution of their duties as Members of the House; of conduct unbecoming the character of an officer and a gentleman; and of contempts, libels and other offences committed against the House itself."

Later, in considering the manner in which Parliament may inform itself of possible misconduct of a Member, the following passage appears:

"Where Members have been legally convicted of offences which warrant expulsion, it is customary to lay the record of conviction before the House. In other cases the proceedings have been founded upon reports of Commissions or Committees of the House or other sufficient evidence."

It would appear therefore that in appropriate circumstances the Legislative Assembly could move to expel a Member, where evidence was placed before it which established that the Member had been guilty of some serious misconduct. The Commission therefore considers that an improper use of the aircraft could constitute "official misconduct", and it has jurisdiction to determine whether any such misconduct has occurred.

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1 Erskine May, "Parliamentary Practice" (1989), Page 112.

2 Erskine May, op cit, p113
C. LOGISTICS OF THE INVESTIGATION

Investigations into the allegation were conducted by an Inspector of Police attached to the Commission, in consultation with the Chief Officer of the Complaints Section.

All relevant Queensland and New South Wales police messages, notes, and occurrence sheets in relation to the reporting of Mr Heath as a missing person and his subsequent location were reviewed (Refer Appendices 1 and 2). Officers of the Commission also reviewed the Hansard report of proceedings in Parliament on 10 and 11 April 1991, regarding the questions by the Leader of the Opposition in relation to this matter, and the responses given by the Premier and Mr Mackenroth (Refer Appendix 4).

Regard was also had to matters raised in correspondence with this Commission and to the Commissioner of the Queensland Police Service by Mr Cooper, Mr Goss and Mr Mackenroth (Refer Appendices 3, 5 and 8).

Interviews were conducted with Detective Sergeant R B Williams of the New South Wales Police Service, and Detective Sergeant 1/c S A Smith of the Task Force, Brisbane.

It was noted that a request from Mr Noel Newham, Commissioner of the Queensland Police Service, to Mr A R Lauer, Commissioner of the New South Wales Police Service for a report on the role played in this matter by the New South Wales police officer Detective Sergeant Williams, had met with a negative response. A request was accordingly made to Mr Lauer in writing by the Chairman of this Commission on 17 May 1991 and the information requested was provided on 24 June 1991 (Refer Appendix 9).

The information provided by Mr Lauer included a statement from Detective Sergeant Williams as to his contact with Mr Heath, Mr Mackenroth and Mr Hannigan, and copies of the contemporaneous record contained in Detective Williams' occurrence sheet for 8 April 1991.

For the purposes of the investigation, Commission staff also reviewed several newspaper reports, purporting to contain accounts by various parties of the events surrounding this incident, and reviewed the account of the matter made in a newsletter from Mr Cooper entitled "Opposition Leaders Report", Volume II number 4, May 1991, which contained an article, "The Mercy Dash: Compassion, Conceit or Concoction?" (Refer Appendix 6).
D. CHRONOLOGY OF EVENTS

5 April 1991
Mr Mackenroth spoke with Mr Heath on the telephone in the afternoon of 5 April 1991, in relation to a proposed speech by Mr Heath to the Parliament during the week of 8 April 1991.

At 11.00pm Mr Heath left his residence in circumstances which later resulted in his being reported as a missing person.

7 April 1991
Mr Heath was reported to the Queensland Police Service as a missing person by his secretary, Miss Rachel Monaghan, who stated that she believed Mr Heath to be suicidal.

8 April 1991
As a result of a transaction at Port Macquarie on an automatic teller machine, an officer of the Queensland Police Service formed the view that Mr Heath may have been in Port Macquarie. At 4.50pm on that date, the officer telephoned Detective Sergeant R B Williams at the Port Macquarie Police Station and provided information regarding Mr Heath to the effect that he was a Member of the Queensland Parliament, that he had been reported as a missing person in the State of Queensland, and that he appeared to be suffering from depression. The officer also supplied to Detective Sergeant Williams details of the vehicle which Mr Heath was believed to be driving.

At 9.13pm, a police message was sent to all News Editors indicating that the police were anxious to locate Philip Arthur Heath, Labour Member for Nundah, who had been reported as a missing person. The message also stated that there was no evidence of foul play at that time.

At 9.20pm, Detective Sergeant Williams identified Mr Heath's vehicle in Port Macquarie and followed it to a caravan park where he located and spoke to Mr Heath. Mr Heath agreed to return to the Port Macquarie Police Station, and to speak on the telephone to officers of the Queensland Police Service.

At about 9.30pm, Detective Sergeant S A Smith, Duty Officer, Task Force, Brisbane received a telephone call from Detective Sergeant Williams who advised that he had Mr Heath with him. Mr Heath spoke to Detective Sergeant Smith and was then driven back to the caravan park by Detective Sergeant Williams. Detective Sergeant Williams returned to the Police Station and again telephoned Detective Sergeant Smith. During
this call Detective Sergeant Williams expressed the opinion that Mr Heath was in a stressed state.

Shortly after that telephone call, Detective Sergeant Williams was telephoned by Mr Gary Hannigan, private secretary to the Minister for Police and Emergency Services, Mr Mackenroth. During that conversation, Detective Sergeant Williams told Mr Hannigan that Mr Heath had appeared to him to be "stressed". Mr Hannigan indicated that he would contact Detective Sergeant Williams again. He telephoned Williams a short time later to indicate that the Minister and he would be travelling to Port Macquarie to speak to Mr Heath.

At 9.55pm, as a result of the information provided by Detective Sergeant Williams, a message was sent from the police communications centre to all News Editors stating that Mr P A Heath had been located safe and well at Port Macquarie, New South Wales. This news was subsequently broadcast on ABC radio at 10.00pm.

At approximately 11.30pm, Mr Mackenroth travelled to Port Macquarie on a State Government jet aircraft, accompanied by his private secretary, Mr Hannigan, and Mr Heath's father.

9 April 1991
At 12.30am, Mr Mackenroth's party was met at the Port Macquarie airport by Detective Sergeant Williams, who took them to the caravan park where Mr Heath was staying. They met with Mr Heath and Detective Sergeant Williams subsequently drove Mr Mackenroth's party back to the airport, from which they departed at 2.45am.

During the sittings of Parliament later that day, the Speaker, the Honourable J Fouras, announced that he had received the resignation of Mr Heath, the Member for Nundah, "effective from 5.00pm on 5 April 1991".

10 April 1991
Mr R E Borbidge, MLA, directed a question in Parliament to the Honourable Mr D M Wells, MLA, and Attorney-General, in relation to "the private use of a Government aircraft on 8 April 1991 to visit a sick and distressed friend who had resigned as a Member of Parliament effective 5.00pm Friday, 5 April 1991 ...".

11 April 1991
The Leader of the Opposition, Mr T R Cooper MLA, directed a question in Parliament to the Minister for Police and Emergency Services, Mr T M Mackenroth, and to the Premier
of Queensland, Mr W K Goss, alleging that Mr Mackenroth had misled the House about the reasons for the trip in the Government jet. Mr Cooper also tabled a copy of the police message sent at 9.55pm indicating that Mr Heath had been located and was "safe and well".

Mr Cooper forwards a letter of complaint to the Criminal Justice Commission.\(^3\)

E. ISSUES RAISED BY THE CIRCUMSTANCES OF THE FLIGHT

In his complaint to this Commission, Mr Cooper alleged that the use of the Government aircraft in the circumstances was improper, as it was for private or party political purposes. In this regard, he stated that at the time the decision was taken to fly to Port Macquarie, Mr Heath had resigned and had ceased to be a Member of Parliament from midnight on 5 April 1991. He further stated that at the time the flight was made, it had been reported by police that Mr Heath had been located and was safe and well, and that Mr Mackenroth was aware of this.

In those circumstances, Mr Cooper alleged that the utilisation of public funds to fly to the aid of a private citizen who was a friend, constituted a breach of travel entitlements, and that, as the trip was either a party political or a private excursion, the cost of the trip should be met by either the Labour Party, or jointly by Mr Mackenroth and Mr Heath Snr.

The issues raised by Mr Cooper's allegation will be canvassed in terms of the three issues identified by the Commission as being relevant to the investigation.

- Mr Heath's Status: Had Mr Heath resigned?

From the information provided, it seems Mr Heath forwarded his letter of resignation on the date it bears, namely 6 April 1991, although it appears that the letter was not received until at least 8 April 1991, and was not formally announced by the Speaker in Parliament until 9 April 1991. The Speaker, when announcing the resignation of Mr Heath to Parliament, noted that the resignation was effective from the date nominated by Mr Heath, that is, 5 April 1991.

In relation to Mr Cooper's allegation that Mr Heath had ceased, at the time of the decision to travel to Port Macquarie, to be a Member of Parliament, it is clear from the statements of both the Premier and Mr Mackenroth that they were of the opinion that the letter of resignation did not take effect until it was formally

\(^3\) The letter of complaint is reproduced in full at Appendix 3.
accepted by the Speaker of the House on 9 April 1991, and officially announced to the Parliament.

Their belief in this regard is evidenced not only by their statements in Parliament on 11 April 1991, but also by contemporaneous comments made by either Mr Mackenroth or Mr Hannigan during their meeting with Mr Heath on 7 April 1991. According to the evidence of Detective Sergeant Williams provided during his interview with officers of this Commission, during the course of the conversation at the caravan park on 7 April 1991, one of the parties to the conversation spoke to Mr Heath about the necessity for, and cost of, conducting a by-election if he persisted with his intended resignation.

The Premier also referred, in his letter to this Commission dated 28 May 1991, to his expressed view that his Government and his Party had a responsibility, where practicable, to avoid, where possible, the cost to the community of incurring a by-election.4

It is clear from these statements that whether or not Mr Heath's resignation became effective at some time earlier than 9 April 1991, at the time the decision was taken to fly to Port Macquarie, both the Premier and Mr Mackenroth believed that Mr Mackenroth's meeting with Mr Heath could have resulted in the withdrawal of his resignation, and the resumption of his duties as a Member of Parliament.

- **Mr Heath's Welfare: Was there a genuine and reasonable concern about Mr Heath's welfare and health?**

Mr Mackenroth stated in Parliament on 11 April 1991, that at least part of the reason for his trip to Port Macquarie was his concern for Mr Heath's welfare, resulting from information which had been provided to a member of his staff by the Queensland Police Service.5

Mr Cooper alleged that Mr Mackenroth would have been well aware that the police, at that time, considered that Mr Heath was safe and well.

When Detective Sergeant Smith of the Queensland Police Service was telephoned by Mr Gary Hannigan, secretary to the Minister for Police and Emergency Services, at about 9.30pm on 8 April 1991, Smith reported that Mr Heath had been found in Port Macquarie and appeared to be "okay".

It is clear that this information was provided to Mr Hannigan prior to a second telephone call to Smith from Detective Sergeant Williams. As previously outlined, when Detective Sergeant Williams returned to the Port Macquarie Police Station

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4 Appendix 8
5 Appendix 4, at p.2
after taking Mr Heath back to the caravan park, he again telephoned Detective Sergeant Smith in Brisbane, and told him that Mr Heath appeared to be in a stressed state. Detective Sergeant Williams said that he had been unable to speak freely on the occasion of the first telephone call, as Mr Heath had been standing near the telephone. It would appear that Detective Sergeant Smith did not pass on the information provided in the second telephone call until he submitted a report on the matter some days later.

Detective Sergeant Williams has stated that shortly after the second telephone call he made to Detective Sergeant Smith, he was telephoned by Mr Gary Hannigan in relation to the matter. Williams stated that he informed Mr Hannigan that he believed Mr Heath was in a stressed state, and that it would be desirable for a friend or relative to talk to him. It was shortly after that conversation that Mr Hannigan telephoned Detective Sergeant Williams again and advised him that he would be flying to Port Macquarie with the Minister to speak to Mr Heath. Mr Hannigan did not at that time particularise the reasons for the trip to Detective Sergeant Williams.

Detective Sergeant Williams recalls that after he met with Mr Mackenroth's party at the airport and drove them to the caravan park, there was some conversation with Mr Heath regarding the cost to the public of a by-election, and he also recalls being advised by either Mr Mackenroth or Mr Hannigan that Mr Heath's resignation would take effect when Parliament resumed at 10.00am that morning.

The Premier stated in his letter to the Commission dated 28 May 1991 that he discussed the proposed flight to Port Macquarie with Mr Mackenroth prior to any decision being taken in the matter. He stated that he formed the view at that time that it was appropriate for Mr Mackenroth to try to speak personally to Mr Heath about his future, and, given the concerns expressed in relation to Mr Heath's emotional state and welfare generally, that it would be appropriate and of assistance to have Mr Heath's father accompany Mr Mackenroth.

The Premier also noted in his letter that Mr Mackenroth holds the position of Leader of the House, and that Parliament was due to sit the morning after the flight to Port Macquarie. He considered in those circumstances that it was appropriate for Mr Heath to return on the Government aircraft to Brisbane to discharge his duty to attend Parliament if it transpired that his behaviour was in some way an aberration, and that upon advice and counselling from Mr Mackenroth and Mr Heath's father, he decided to resume his duties.
The Guidelines for the Use of Government Aircraft: Was the use of the Government aircraft a breach of the guidelines issued by the Division of Aviation Services?

The aircraft used for the flight in question was Government Aircraft BAe 125, one of the aircraft maintained for use by the Government Aviation Division. The Commission has reviewed the guidelines printed under the auspices of the Division of Aviation Services, which purport to govern the usage of aircraft and helicopters by Ministers of the Crown. The document states that the Bureau of Emergency Services operates a Westwind II Jet aircraft, a Super Kingair 200 aircraft, a Twin Engine IFR helicopter (based in Brisbane) and a single engine VFR helicopter (based in Cairns). The guidelines specify that the aircraft are available for Ministerial use in limited circumstances, and that priority at all times will be given to community service and emergency service operations.

Mr Mackenroth’s office has advised that the guidelines covering the use of the Government Kingair and Westwind aircraft also applied to the BAe 125 aircraft, the only additional restriction on the use of the BAe 125 being that, as it was for sale, the BAe 125 was not to be considered a “primary use” aircraft and was only to be used when other Government aircraft were unavailable. The aircraft had been used on several occasions previously for transferring human organs for transplant, for emergency service during the Charleville and North Queensland floods, and to transport the State Governor, His Excellency, Sir Walter Campbell.

The decision to use the BAe 125 in preference to any other aircraft was made by officers of the Aviation Division, Bureau of Emergency Services and not by Mr Mackenroth or any member of his staff. The manager of the Aviation Division, Mr Walsh, advised that the BAe 125 was selected in preference to other aircraft on the basis of crew competence and familiarity with the aircraft, the urgency and timing of the task, and the compatibility of the aircraft with facilities at the destination airfield. Specific reasons given were:

(i) the two pilots available had not crewed the other available aircraft together previously and the junior pilot was not fully qualified on the other available aircraft for night operation. He was fully qualified on the BAe 125. Both pilots were better able to operate the BAe 125 at night;

(ii) The task involved landing at an unfamiliar airfield at night. Port Macquarie airfield has only limited approach aids and lighting for night operation and a relatively short runway. The pilots had more confidence in operating the BAe 125 into the airfield as it required less runway length than the other available aircraft.

(iii) The BAe 125 could be prepared more quickly for departure from Brisbane.

7 Appendix 8A
In relation to administrative matters, the guidelines state that both the Ministerial air unit and the helicopters are under the administrative control of the Aviation Services Division, Bureau of Emergency Services. Full cost of the operation of the aircraft and the helicopters are met by the Bureau of Emergency Services, however, overnight and travelling expenses of the pilots is charged against the Ministerial Office concerned.

Part 3 of the document governing usage of the aircraft sets out the guidelines for aircraft use. It provides that the prime function of the aircraft and the helicopters is to service community requirements, and that, as a general rule, the following conditions apply:

"The Minister for Police and Emergency Services will decide, on a case by case basis, whether circumstances warrant the use of the aircraft by a Minister or a Department.

The aircraft are not a substitute for normal commercial travel and should only be used when alternative means are not adequate to service a Minister's official requirements.

Travel to and from a Minister's electorate shall not be made in the aircraft unless that travel is to a specific function which is related to the discharge of a Minister's official responsibilities (that is, portfolio related)."

None of the other conditions listed in the guidelines would appear to be applicable to the situation under review, as they cover the use of the aircraft by Departmental officers, the use of the aircraft for travel solely within a Minister's electorate, and use of the aircraft to operate on the basis of a one way flight, returning to Brisbane empty.

Upon interpretation of the guidelines it would seem that, as a general rule, the main criterion for the use of the Government aircraft by a Minister would be that the travel was connected in some way with the discharge of a Minister's official responsibilities. Mr Mackenroth, as Minister for Police and Emergency Services, had authority under the guidelines to decide whether the circumstances warranted the use of the aircraft by a Minister. On this occasion, the Premier was also aware of the proposed use and considered it appropriate in the circumstances.

F. STANDARD OF PROOF

The Commission in considering issues in relation to possible disciplinary charges of official misconduct, must make determinations at the conclusion of its investigation subject to the requisite standard of proof which a Misconduct Tribunal would apply in hearing any such charge.
The Commission considers that a Misconduct Tribunal sitting in relation to a disciplinary charge of official misconduct would be required to apply the standard of proof "on the balance of probabilities".

Although the Criminal Justice Act (1989-1990) is silent on the question of the standard of proof, section 2.43(1) of the Act states:

"A Misconduct Tribunal is not bound by rules or the practice of any Court or Tribunal as to evidence or procedure in the exercise of its jurisdiction, but may inform itself on any matter and conduct its proceedings as it thinks proper".

As Carter J noted in Re: Seidler (1986) 1 QR 486 at page 491, such a clause clearly distinguishes disciplinary proceedings from criminal proceedings. It is considered in those circumstances that the criminal standard of proof would not apply to investigative findings of, or proceedings before, this Commission.

The Commission considers on the authorities that the appropriate standard of proof is the civil standard, which varies according to the gravity of the finding to be made. The standard of reasonable satisfaction necessary before findings should be made was defined by Sir Owen Dixon in Briginshaw v Briginshaw (1938) 60 CLR 336 at pages 361-362, where he stated:

"Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether an issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect references ... This does not mean that some standard of persuasion is fixed intermediate between the satisfaction beyond reasonable doubt required upon a criminal inquest, and the reasonable satisfaction which in a civil issue may, not must, be based on a preponderance of probability. It means that the nature of the issue necessarily affects the process by which reasonable satisfaction is attained".

The Commission also finds support for its view that the requisite standard of proof for matters which it investigates is that of "reasonable satisfaction" in the adoption of that standard by inquiries such as the Royal Commission appointed to inquire into the loss of the Australian naval ship "Voyager", the National Hotel Royal
Commission, and the recent Commission of Inquiry into certain allegations concerning Mr Justice Vasta, conducted by Sir Harry Gibbs, Sir George Lush, and the Honourable Michael Helsham.

G. FINDINGS

Upon the commencement of its investigation into the complaint of Mr Cooper, the Commission determined that the circumstances as outlined in relation to the use of the Government aircraft by Mr Mackenroth could not amount to a criminal offence. In making this determination, the Commission had regard to the fact that Mr Mackenroth was the Minister responsible for authorising the use of the aircraft, and that the use was, on this occasion, approved by the Premier.

The Commission, therefore, proceeded to consider whether the use of the aircraft could amount to official misconduct. As previously stated, it is considered that the behaviour would amount to official misconduct only if it was conduct which involved the discharge of Mr Mackenroth’s powers in a manner not honest or impartial or involved a breach of the trust placed in him by reason of his position and, in either case, was a disciplinary breach that could provide reasonable grounds for the termination of his services.

In relation to the issues raised, the Commission is satisfied to the requisite standard of proof of the following conclusions:

• Mr Heath’s Status:

The Commission is satisfied that when, with the approval of the Premier, Mr Mackenroth decided to fly to Port Macquarie, both Mr Mackenroth and the Premier considered that Mr Heath’s resignation would not take effect until Parliament resumed at 10.00am on 9 April 1991, and that it was appropriate for Mr Mackenroth to meet personally with Mr Heath to try to persuade him to withdraw his resignation, thus avoiding the inconvenience and cost to the community of a by-election.

• Mr Heath’s Welfare:

The Commission is satisfied that, at the time the flight was made, both Mr Mackenroth and the Premier had a genuine concern, reasonably based on information provided by Detective Sergeant Williams of Port Macquarie, that Mr Heath was suffering from stress and would benefit from being counselled by a friend or relative.

The Commission is further satisfied that although a police message was sent to all News Editors at 9.55pm on 8 April 1991, prior to
Mr Mackenroth undertaking the flight to Port Macquarie, to the effect that Mr Heath had been located "safe and well" at Port Macquarie, information had been provided to Mr Mackenroth's private secretary, Mr Gary Hannigan, to the effect that concerns were still held for Mr Heath's welfare.

- The Guidelines for use of Government Aircraft:

The Commission is satisfied that Mr Mackenroth was the Minister responsible for authorising the use of the Government jet under the relevant guidelines.

The Commission is also satisfied that, although the use of the Government jet by a Minister for purposes in no way connected with official duties of the State could, in some circumstances, amount to official misconduct, both Mr Mackenroth and the Premier believed at the relevant time that a clear nexus existed between the use of the aircraft, and the fulfilment of official duties. The Commission is further satisfied that this belief was reasonable.

II. CONCLUSION

The Commission is satisfied that the use of the Government aircraft, as complained of by Mr Cooper, did not amount to official misconduct on the part of any of the persons involved. In the circumstances, the Commission does not intend to take or to recommend the taking of, any action against any person in this matter.
APPENDICES


APPENDIX 1A  Police message re missing person Philip Arthur Heath, 21:11 hours, 8 April 1991.


APPENDIX 1C  Message to Assistant Commissioner Comrie from Detective Sergeant Smith re missing person Philip Arthur Heath, 00:03 hours, 9 April 1991.


APPENDIX 2B  Notes prepared by Detective Sergeant Smith re missing person Philip Arthur Heath and conversation with Sergeant Williams commencing 21:45 hours, 8 April 1991.

APPENDIX 3  Letter dated 11 April 1991 from Mr R Cooper, MLA, Leader of the Opposition to Sir Max Bingham QC, Chairman of the Criminal Justice Commission.

APPENDIX 3A  Letter dated 13 May 1991 from Mr R Cooper, MLA, Leader of the Opposition to Sir Max Bingham QC, Chairman of the Criminal Justice Commission.


APPENDIX 5  Letter dated 16 April 1991 from the Honourable T Mackenrooth MLA, Minister for Police and Emergency Services to the Commissioner of the Police Service (Queensland).
APPENDIX 5A  Letter dated 16 April 1991 from Commissioner of the Queensland Police Service to Mr A R Lauer, Commissioner of the New South Wales Police Service.

APPENDIX 5B  Letter dated 15 May 1991 from Mr A R Lauer Commissioner of the New South Wales Police Service to Commissioner of Police Queensland Service.

APPENDIX 5C  Letter dated 20 May 1991 from Commissioner of Police Service (Queensland) to the Honourable T Mackenroth, MLA, Minister for Police and Emergency Services.

APPENDIX 6  Opposition Leaders Report, Volume II Number 4, May 1991 "The Mercy Dash: Compassion, Conceit or Concoction?"

APPENDIX 7  Report from Sunday Mail 12 May 1991, "Runaway MP Blames Goss".

APPENDIX 7A  Report from Sunday Sun 12 May 1991, "MP Living with His Secretary".
"Pay For Jet Use – Opposition".

APPENDIX 7B  Report from Courier Mail 13 May 1991, "Police Told Heath Was Suicidal: Goss".

APPENDIX 7C  Report from Courier Mail 14 May 1991, "Police Files Back Government Claim That MP Was 'Suicidal'".

APPENDIX 8  Letter dated 28 May 1991 from the Honourable the Premier of Queensland to Sir Max Bingham QC, Chairman of the Criminal Justice Commission.

APPENDIX 8A  Guidelines –
Division of Aviation Services
(Ministerial Air Unit and State Government Helicopters)
Usage of aircraft and helicopters by Ministers of the

APPENDIX 9  Letter dated 24 June 1991 from Mr A R Lauer APM, Commissioner of Police (New South Wales) to Sir Max Bingham QC, Chairman, Criminal Justice Commission.

ITEM 1: MISSING PERSON

PHILIP ARTHUR HEATH, 24.09.54, STATE MEMBER OF PARLIAMENT FOR NUNDAH OF FLAT 2, 240 KINGSFORD SMITH DRIVE, HAMILTON REPORTED AS A MISSING PERSON BY RACHEL POTT MONAGHAN (SECRETARY) & DEFACTO. HEATH LAST SEEN AT ABOUT 11PM ON 5.4.91 AT THE HOME ADDRESS. MONAGHAN BELIEVES M.P., MAY BE SUICIDAL. G.B. AND MISSING PERSON REPORT BY CONST KLEIG OF NORTH BRISBANE MOBILES. DET. SGT. DUNN OF HOMICIDE ALSO ASSISTED IN ENQUIRIES. DUNN TO FURNISH SPECIAL OCCURRENCE SHEET.

ITEM 2: ARMED ROBBERY

INFORMATION FROM OPERATIONS THAT ARMED HOLD UP HAD BEEN COMMITTED AT B.P. SERVICE STATION, ORIEL AND KITCHNER RDS, CLAYFIELD. OFFENDER, MALE PERSON ARMED WITH PISTOL. NUNDAH UNIFORM AND C.I.B. ATTENDING.

--- END OF MESSAGE ---
8 APR 91 21:13

QPD MESSAGE 2158 SENT FROM HPC045 ON 08/04/91 AT 21:11
TO:...XMT+9RLO4+HPC04+HPC05
ATTENTION NEWS EDITORS
FROM:...INSPI. MICK O'BRIEN POLICE COMMUNICATIONS CENTRE BRISBANE
SUBJECT: MISSING PERSON PHILIP ARTHUR HEATH

POLICE ARE PRESENTLY CONDUCTING INQUIRIES INTO THE PRESENT WHEREABOUTS OF PHILIP ARTHUR HEATH, LABOUR MEMBER FOR MUNDAH WHO WAS REPORTED AS A MISSING PERSON BY HIS FAMILY ON SATURDAY MORNING. THERE IS NO EVIDENCE OF FOUL PLAY.

POLICE ARE ANXIOUS FOR MR. HEATH TO CONTACT THEM TO ESTABLISH THAT HE IS SAFE AND WELL.

INQUIRIES OF A POLITICAL NATURE ARE NOT TO BE DIRECTED TO STAFF AT THIS OFFICE.
8 APR 91 21:56

QPD MESSAGE 22:13 SENT FROM HPDCS ON 08/04/91 AT 21:55
TO:  IMET-HRLO1 HPDCS-HPDCS
ATTENTION NEWS EDITORS:
FROM: INSPECTOR J D CRAIG POLICE COMMUNICATIONS BRISBANE
SUBJECT: MISSING PERSON PHILIP ARTHUR HEATH
MISSING PERSON PHILIP ARTHUR HEATH LOCATED SAFE AND WELL AT
MACQUARIE NEW SOUTH WALES NO FURTHER BROADCASTS REQUIRED
THANK YOU.

Message received on 11/03/91 21:21 h 55 Elapsed 01 min 33.
Note: As the above VDU message is difficult to read in parts, it has been re-typed below:

VDU MESSAGE
3 sent from HOIB.28 on 09/04/91 at 00:01

TO: HOLD
ATTENTION: ASSISTANT COMMISSIONER COMRICE
FROM: DET SGT 1/S A. SMITH, DUTY OFFICER, TASK FORCE, CRIME OPERATIONS
SUBJECT: OCCURRENCE SHEET - 09/04/91

ITEM 1
MISSING PERSON LOCATED
PHONE CALL FROM DET. SGT. WILLIAMS OF PORT MACQUARIE C.I.B. STATING HE HAD PHILIP ARTHUR HEATH IN THE OFFICE WITH HIM. SPOKE TO HEATH ON PHONE. HE ADVISED HE WAS PRESENTLY RESIDING AT SANDOWNER BREAKWALL CARAVAN PARK 98-893 PORT MACQUARIE AS HIS POSTAL ADDRESS IT ALSO STATED THAT HE EXPECTED TO MOVE INTO A FLAT IN THE NEXT DAY OR TWO. HE STATED THAT HE WAS AULT AND THAT HE HAD forwarded LETTERS TO MEMBERS OF PARLIAMENT AND MS RACHEL MONAGHAN EXPLAINING HIS ACTIONS AND INTENTIONS.

MR GARY HANNIGAN, POLICE MINISTERS SECRETARY HAS SPOKEN TO DET. SGT. WILLIAMS OF PORT MACQUARIE POLICE RE HEATH.

NO OTHER SPECIAL OCCURRENCE.

*** END OF MESSAGE ***
<table>
<thead>
<tr>
<th>Date, time, and occurrence No.</th>
<th>Report of occurrence</th>
<th>Police in charge action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.4.91 7.35pm</td>
<td>MISSING SITTING MEMBER OF THE QUEENSLAND PARLIAMENT - HEATH.</td>
<td>All Police.</td>
</tr>
<tr>
<td>91/311 About 4.50pm this date</td>
<td>Detectives Kerry Dunn, Homicide Unit, Brisbane, contacted this station and gave particulars of a missing sitting member of the Queensland Parliament.</td>
<td>NOT FOR PRESS.</td>
</tr>
<tr>
<td></td>
<td>The missing person is:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Philip Arthur HEATH, born 24.9.64, Unit 2, 240 Kingsford-Smith Dve., Hamilton, Queensland.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Described as 178cm tall, eighty kilograms, medium build, fair complexion, light brown collar length hair, blue eyes, driving a 1985 Holden Commodore sedan, red in colour, Queensland number 197.49,</td>
<td>Patroin Commander, Inspector Kay informed.</td>
</tr>
<tr>
<td></td>
<td>Heath was last seen on Friday evening, the 5th of April, 1991, at 11pm in Brisbane.</td>
<td>Heath located staying at the Sundowner Breakwall Caravan Park. See Occurrence Ref entry 91/112.</td>
</tr>
<tr>
<td></td>
<td>It is known that he has made three withdrawals at the St. George Building Society's automatic telling machine, Horton Street, Port Macquarie. The first was at 10.15am on the 7th of April, 1991. The other two were at 9.19am, and 2.41pm this date.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Detective Dunn states that the particular vehicle is fitted with distinctive gold magnesium wheels and has slightly tinted windows.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>He further stated that it appears that Mr. Heath is suffering from depression.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>He has further requested that should Mr. Heath be located that he be contacted on Brisbane 07.364.6709, or his pager, (07) 364.6199, ask for 28842 and leave message. If he can not be contacted the Duty Inspector, Brisbane, on telephone 07.364.4450 be contacted.</td>
<td></td>
</tr>
<tr>
<td>Date, time, and occurrence No.</td>
<td>Report of occurrence</td>
<td>Police in charge action taken</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>3.05a.m.</td>
<td>Member of the Queensland Parliament located.</td>
<td>Inspector Kay.</td>
</tr>
</tbody>
</table>

91/312. About 9.20 p.m. on the 8th of April, 1991 whilst off duty I saw the Queensland vehicle 157.ACR, believed to be driven by the missing member of the Queensland Parliament travel east in Clarence Street past the intersection of Ray Street. I followed this vehicle to an on-site caravan at the Sundowner Breakwall Caravan Park where I spoke to Mr. Philip Arthur Heath. I informed him that he had been reported as a missing person from Brisbane and requested that he accompany me to the Police Station so that he may telephone Brisbane. He agreed to accompany me, but stated that he would only speak to the Queensland Police. At the Port Macquarie Police Station I telephoned Inspector Steve Smith, Duty Inspector of the Task Force, Brisbane and told him that Heath had been located and was present to speak to him. This Heath did after which I again spoke to Inspector Smith. After this conversation I returned Mr. Heath to his caravan. Whilst at the caravan...
<table>
<thead>
<tr>
<th>Date, time, and occurrence No.</th>
<th>Report of occurrence</th>
<th>Police In charge action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENTRY 91/312 CONTINUED.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Peter Perry, who told me that Mr. Heath booked into the park on Sunday the 7th of April, 1991 and paid up to Sunday the 14th of April, 1991 using an American Express card. At the time he booked in he gave his address as c/o 3 Myuna Street, Bulimba, Queensland. On returning to the station I was contacted by Mr. Garry Hanigan, the Secretary to the Minister of Police, Queensland and I told him what had occurred in respect of locating Mr. Heath. He requested that I wait at the station whilst he made some inquiries. He subsequently contacted me again and told me that the Minister of Police, Queensland, Mr. Terence Mackenroth, Mr. Philip Heath's father, and himself would be flying to Port Macquarie immediately to speak to Philip Heath. They all in fact arrived at the Port Macquarie Airport at 12.30pm and were met by myself. On their arrival I was informed that Philip Heath had tendered his resignation from Parliament unexpectedly and that he was having some domestic problems. They stated that they were concerned for him and would endeavour to have him return with them to Brisbane before Parliament resumed which is 10am this date. They wished to do this so that Heath could withdraw his resignation and to allow himself time for reconsideration of his actions. I took Mr. Mackenroth, Mr. Hanigan and Mr. Heath, Snr. to the Sundowner Breakwall Caravan Park where lengthy discussions were held between them and Philip Heath, but these were to no avail and he refused to return to Queensland. Mr. Mackenroth, Mr. Hanigan and Mr. Heath, Snr., were returned to the Port Macquarie airport where they departed at 2.45am for Brisbane. No further action is desired by any party in this matter.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Robert B. Williams
8 April 1991

Det. Srn. Sergt. T. LUNNEY.

No special occurrences received.

T. LUNNEY

Det. Srn. Sergt. 1350

1600 hrs - 2400 hrs. Set. Sgt. 1/c S. A. SMITH.

ITEM 1. MISSING PERSON HEALTH

2130 Telephone Call from Det. Sgt. Bob WILLIAMS of Port Macquarie C.I.D. stating that he had Mr. KEATH with him at the Office. KEATH spoken to on phone and he stated that he was now residing in Port Macquarie at Sundowner Breakwall Caravan Park. He expected to move into a flat in the near future. He gave P.O. Box 1403 Port Macquarie as his postal address. He also informed me that he had sent letters to Members of Parliament explaining his situation. He also had sent a letter to Michael ADAMSON.

Det. Sgt. Bob WILLIAMS of Port Macquarie C.I.D. has spoken to Mr. HUGHES the Police Ministers Secretary, in relation to Mr. KEATH's welfare at this time.

S. A. SMITH

Det. Sgt. 1/c 2245.
Bob Williams  Date 4th
065-830143  OK

Phillip Heath  9.20 pm.

Port McQuarie.

Muir Prins &

Miss Monaghan Letter.

& Mr. van Paull Letter

Aunt Judy Money.

Ask Mr. McQuarie Point to contact 920 Pm
Sunday Money 7 Am.
Safe & Well.

Taking up residence
in 920 McQuarie Point.
P.O. Box 1408.

Sundown Breakfast.
Carrara Park.

Will be out of the Town.
9.20 PM

Talked about Selby. Can
Send in advance of 1 week
Gave address
C/o Mr. G. Myung at
Balibaru.

Arrived the letter to 14 th
Paid by American Express.

Williams doesn't think he's
real well.

Joe HANICHAN has done
in contact with WILLIAMS

Bill DAVIS, Railway Apt.

2-10 A. LEMON

Sir Max Bingham, Q.C.,
Chairman,
Criminal Justice Commission,
557 Coronation Drive,
TOOWONG. Q. 4066

Dear Sir Max,

I wish to bring to the attention of your Commission an issue involving what appears to be improper use of a jet aircraft, owned by the State Government, for private or party political purposes.

The facts of this matter as they appear to me are as follows:

(a) Late on the afternoon of Friday, April 5, 1991, a letter of resignation from the Member for Nundah, Mr Philip Heath was submitted to the Office of the Speaker.

(b) At 9.13 p.m. on Monday April 8, 1991 a message from the Police Communications Centre, Brisbane listed Mr. Philip Arthur Heath, the Member for Nundah as a missing person and indicated that police were anxious to contact him to establish that he was safe and well.

(c) At 9.55 p.m. on Monday, April 8, 1991 a message from the Police Communications Centre Brisbane indicated that Mr Heath had been located safe and well at (Port) Macquarie, New South Wales. This was subsequently reported on the ABC Radio news at 10.00 p.m.

(d) At approximately 11.20 p.m. on Monday, April 8, 1991, the Minister for Police and Emergency Services, Mr. Mackenroth, accompanied by a member of his private staff and the father of Mr. Philip Heath flew out of Brisbane for Port Macquarie where they reportedly spoke with Mr. Heath for about two and a half hours. They then flew back to Brisbane leaving Mr Heath in Port Macquarie.

(e) In State Parliament on April 9, 1991, the Speaker advised that he had received the resignation of the Member for Nundah "effective from 5.00 p.m. on 5th April, 1991."
(f) In subsequent public comments and reports on the issue, the Minister for Police and Emergency Services has claimed that the Monday night flight was a "mercy dash" to help a friend. The Minister's actions were subsequently endorsed by the Premier during Opposition questioning in State Parliament.

I submit that while Mr. Mackenroth's actions may have been well-intentioned, they were contrary to the travel entitlements of Members or Ministers.

At the time of the flight in the State Government jet, the Member for Mundah had resigned and ceased to be a member of Parliament from midnight on April 5, 1991. It had also been reported by police that he had been located "safe and well".

Thus the Minister's actions in utilising public funds to fly to the aid of a private citizen who was a friend constituted a breach of his travel entitlements.

I submit that as the trip was either a party political or private excursion, the costs of it should be met by either the Labor Party or jointly by Mr. Mackenroth and Mr. Heath's father.

I enclose for your information a copy of the relevant police bulletins referred to above. The issue was also the subject of several questions in Parliament on April 10 and 11, 1991 and I commend perusal of Hansard and associated newspaper reports to you.

I would appreciate your Commission's investigation of the events outlined above as part of its current inquiries into Parliamentary travel entitlements and would appreciate your advice in due course.

Yours faithfully,

RUSSELL COOPER.

Sir Max Bingham, Q.C.,
Chairman,
Criminal Justice Commission,
P.O. Box 157,
NORTH QUAY.  Q.  4002

Dear Sir Max,


I wish to bring to the attention of your Commission public comments reportedly made by the former Member for Nundah, Mr. Phil Heath as they appeared in both The Sunday Mail and Sunday Sun newspapers of May 12th, 1991. (Copies attached).

It is my opinion that the views expressed by Mr. Heath, according to these articles, indicate that his absence was due to political matters, not health related as repeatedly claimed by Government spokesmen.

This reinforces the Opposition's view that the use of the Government jet as outlined in previous correspondence was for party political purposes and as such, costs of the trip should be met by the Australian Labor Party.

I would appreciate your Commission's consideration of this matter as part of its current inquiries into Parliamentary travel.

Yours faithfully,

[Signature]

RUSSELL COOPER.
await the outcome of the proceedings before the Cooke inquiry. If I am required to take any action on the basis of the outcome of those proceedings, then I will take that action.

Use of Government Aircraft by Minister for Police and Emergency Services

Mr BORBIDGE: I ask the Attorney-General: in view of precedents set by the courts in recent months, does he consider that the private use of a Government aircraft on 8 April to visit a sick and distressed friend who had resigned as a member of Parliament, effective 5 p.m., Friday, 5 April 1991—

Mr Schwarten: How low can you get!

Mr BORBIDGE: I suggest that the honourable member look at a few of the charges that are before the courts.

Mr Ardill: Sit down, sleaze bag.

Mr BORBIDGE: Sit and cop it!

Mr SPEAKER: Order! I ask the member for Surfers Paradise to put his question.

Mr BORBIDGE: In view of precedents set by the courts in recent months, does the Attorney-General consider that the private use of a Government aircraft on 8 April to visit a sick and distressed friend, who had resigned as a member of Parliament, effective 5 p.m., Friday, 5 April, constitutes a misappropriation of public funds?

Mr WELLS: The honourable member will be aware, in referring to precedents set by courts, that courts do not determine hypothetical questions.

Opposition members interjected.

Mr SPEAKER: Order!

Mr Cooper interjected.

Mr SPEAKER: Order! The Leader of the Opposition!

Queensland Coal Board

Mr SMYTH: In directing a question to the Minister for Resource Industries, I refer to an article in a recent issue of Business Queensland about the Queensland Coal Board and its alleged powers. I ask: can he clarify the role of the board and its future direction?

Mr VAUGHAN: I am very pleased to address the question from the member for Bowen. I appreciate the interest that he has in Queensland’s coal mining industry, which is very important to this State. I noted the article in Business Queensland. There are quite a number of very serious inaccuracies in the article and in the arguments put forward by the correspondent. The Queensland Coal Board is a specialist policy adviser to the Government on a very important industry. Honourable members would be aware that the worth of this industry to this State was approximately $3 billion last financial year. That figure could increase this financial year.

One of the issues raised in the article, which was very inaccurate, was the suggestion that the Coal Board was going to be involved in the marketing of coal. On a number of occasions, I have made the position quite clear—very specifically, in fact—that the Queensland Coal Board would not be involved in the marketing of coal. Although I spelt this out in no uncertain manner, unfortunately the message did not get through to the people associated with the article. The article also referred to a call for a review of the board. I point out that I have done that. When I became the Minister, I conducted a review of the board and, as a result, I have restructured it. In conjunction with that restructuring, I have sent out a comprehensive document to the people involved in the industry—a Green Paper—so that they could understand what I was on about and so that there could be no misunderstanding. Opinions were sought from the coal mining
QUESTIONS WITHOUT NOTICE

Use of Government Aircraft by Minister for Police and Emergency Services

Mr COOPER: In directing a question to the Minister for Police and Emergency Services, I put it to him that he has misled the House by claiming that his trip in the Government jet on Monday night to see Phil Heath was a mercy dash and that he was acting on police concerns when, in fact, a police message expressing concern for Mr Heath, issued from Brisbane headquarters at 9:13 p.m. on Monday night, was rescinded less than an hour later at 9:55 p.m., and when a later police bulletin used the words that he had been located “safe and well”. I also put it to him that he did not take off from Brisbane in the Government jet until 11:20 p.m., which was almost an hour and a half later and that, therefore, he knew full well that Mr Heath was safe and well. I ask: will he now admit that this was a private trip, the cost of which should be met by the Labor Party that sent him to Port Macquarie to talk Mr Heath out of resigning in the first place?

Mr MACKENROTH: In answer to the honourable member’s question—I left at 11:35 p.m. The situation is that the information that had been supplied to me by the Queensland police and by the New South Wales police was that they were concerned about Mr Heath. I do not intend to go into that.

Mr Cooper: You got a message to say that he was safe and well.

Mr MACKENROTH: I inform the honourable member that, if he wishes, I will tell him the information with which I was supplied. I will do that privately, if he wishes. The information in relation to a police message being sent out that Mr Heath had been found was supplied so that he would no longer be listed as a missing person. The information that was provided to me by the Queensland police through a member of my staff, who had spoken to the sergeant in New South Wales and who, in turn, had spoken to Mr Heath, was that they were concerned about him, and that is the reason why I went to Port Macquarie.

Mr COOPER: For the benefit of the House, I table the police bulletin that was issued.

Use of Government Aircraft by Minister for Police and Emergency Services

Mr COOPER: I ask the Premier, in the light of the fact that the Police Minister has misled the House and has clearly abused the use of the Government jet by claiming to be on a mercy dash when he was in fact looking for a man who was lost but had been found and who was described by police as “safe and well”, what action will be taken against the Minister? Will the ALP now pay for the cost of the trip to Port Macquarie, which was clearly a political dash and not a mercy dash?

Mr W. K. GOSS: Let me say quite unequivocally that the Minister for Police has my full support and, furthermore, that I endorse the action he took. Let me also say that, late on Monday evening, the Police Minister telephoned me at my home and told me that the police had located Mr Heath.

Mr Borbidge: It was on the 10 o’clock ABC news.

Mr W. K. GOSS: I am telling the honourable member that the Police Minister telephoned me.

Mr Borbidge: And an hour and a half before you sent him.

Mr W. K. GOSS: The point is quite irrelevant, Mr Speaker, and I will come to what is relevant in a moment. The Minister for Police indicated to me that, given the reports that had been made to the Queensland police originally by people close to Mr
Heath expressing concern about his well-being and his emotional state—they were the
original reports coming to police on Friday or at some time over the weekend about
the concern of people close to Mr. Heath in respect of his emotional well-being—and
given reports from the New South Wales police officers of their concern, he felt the
appropriate thing to do was to travel to Port Macquarie and take Mr. Heath's father
with him. The advice that was forthcoming to the Minister was that if Mr. Heath would
listen to anyone in terms of making decisions about his future, he would listen to his
father. On that basis, I agreed with the Police Minister that it was appropriate for him
to go with Mr. Heath's father out of that concern—

Mr. Littleproud: He wasn't a member of Parliament.

Mr. W. K. Goss: —and because of the fact that Mr. Heath was the subject of
serious concern about his emotional well-being, I will take the interjection.

Opposition members interjected.

Mr. Speaker: Order! I would like to hear the answer. I will not accept interjections
in the numbers that have been made. I warn members that they must not interject.

Mr. Veivers interjected.

Mr. Speaker: Order! I warn the member for Southport under Standing Order
123A.

Mr. W. K. Goss: As I understand the position in relation to the interjection, which
I am happy to take because I am happy to deal with every aspect of this matter in
detail, Mr. Heath was still a member of Parliament and his resignation did not become
effective until it had been legally and officially received by the Speaker, which I
understand——

Mr. Fitzgerald interjected.

Mr. Speaker: Order! I warn the member for Lockyer under Standing Order 123A.

Mr. W. K. Goss: I understand that that occurred at some time on Tuesday morning,
when it came into the possession of the Speaker. In relation to this trip, let me deal
quite specifically with the hypocrisy and grubbiness of the actions taken by members of
the opposition parties. On Tuesday morning and as late as Wednesday morning, the
Leader of the Opposition said that he would not play the man and that he would leave
the matter alone. In contrast to that, of course, the member for Toowong played the
man. The reaction to his quite disgraceful and atrocious attack on an individual and
his family who were in a pretty desperate situation was such that the member for
Toowong backed off.

Mr. Veivers interjected.

Mr. Speaker: Order! The member for Southport!

Mr. W. K. Goss: It was such that the member for Toowong backed off with his
tail between his legs yesterday, and so he should have.

As to the Leader of the Opposition—he is a bit slow on the uptake, so he decided
yesterday afternoon to get into the gutter, which is where he is now. He knows that
neither the Minister for Police nor I will go into the very personal detail of this matter
in public.

Mr. Cooper: I bet you won't.

Mr. Speaker: Order! If the Leader of the Opposition does not cease interjecting,
I will warn him under Standing Order 123A.

Mr. W. K. Goss: The Leader of the Opposition knows that we do not want to
cause any further stress to Mr. Heath's family or to other people who are close to him.

Mr. Veivers interjected.
Mr Speaker: Order! I warn the honourable member for Southport for the last time under Standing Order 123A. I have been extremely tolerant. My tolerance is coming to an end.

Mr W. K. Goss: In that sense, we are witnessing the courage of a man who stands behind a woman, some children and some other family members to make his attack. He knows that the Minister for Police and I will not come back at him hard because we do not want to cause harm to innocent people.

Furthermore, and in conclusion——

Mr Hobbs interjected.

Mr Speaker: Order! I warn the member for Warrego under Standing Order 123A.

Mr W. K. Goss: Perhaps this brave individual who calls himself the Leader of the Opposition might care to explain to the public the difference between this event and the occasion on which Sir Joh Bjelke-Petersen flew in the Government jet to see his injured son.

Mr Prest: I have two questions, the first being to the Premier.

Mr Borbidge interjected.

Mr Speaker: Order! I warn the member for Surfers Paradise under Standing Order 123A.

Honourable members, tomorrow is Friday and we will all be away from this place. I would like to hear the question being asked by the member for Fort Curtis but, because you are all screaming out, I cannot hear him.

Special Premiers Conference

Mr Prest: I ask the Premier: has his attention been drawn to reports that there are attempts in Canberra to stop any discussion of any shift in the responsibility for community services from the Federal Government to the States? Can he inform the House what process was agreed to at the Special Premiers Conference last year in Brisbane for these matters to be discussed?

Mr W. K. Goss: This is an important issue, because the Special Premiers Conference process is one that does hold out some prospect—certainly no certainty, but some prospect—of important and much needed reforms in this country in the operation of government, particularly at the Federal and State levels, and in the efficiency of government. To the extent that those reforms can be successful, I believe that they will be good for the public. They will lead to the improved delivery of Government services to members of the public for the same dollars, which is most important in all areas, particularly in the welfare areas where there are many people who need the support and assistance of the community through Government. The extent to which we can maximise the actual delivery of services is important.

The Special Premiers Conference agenda applies across a wide range of issues, but it should be remembered that last year in Brisbane at that historic Special Premiers Conference a proper process was agreed to by the Prime Minister and the respective Premiers and Chief Ministers of the various States and Territories. The process involves all of those parties—the Commonwealth, the States and the Territories—working together in a cooperative way, which is unprecedented. One of the matters is the future of tied grants. On behalf of the Commonwealth, the Prime Minister has made a commitment to reduce tied grants in favour of general grants to give the States greater spending discretion. The States should have that discretion. I believe that will reduce the extent of duplication of government, which can only maximise the dollars and the services going to the public as the cost of administration and the cost of government in those areas is reduced.
16th April, 1991

Noel Newnham
Commissioner of Police
Police Headquarters
Roma Street
BRISBANE QLD 4000

Dear Noel,

I refer to the issue of my travelling to Port Macquarie on April 8, 1991 to render assistance to the then Member for the State seat of Mundah, Phil Heath.

On Saturday, April 6, Mr Heath was reported as a missing person to the Queensland Police Service. It was alleged that he was depressed and could be suicidal. The Queensland Police Service conducted extensive inquiries to locate Mr Heath. On Monday, April 8, Port Macquarie Police advised that Mr Heath had been located. I later went to Port Macquarie and spoke to Mr Heath.

The whole issue of the locating of Mr Heath was the subject of a report by the Acting Commissioner of Police, Bob Kirkpatrick. That report advises that Detective Sergeant Bob Williams of the Port Macquarie CIB contacted the Duty Officer at the Task Force on two occasions to advise on the condition of Mr Heath. Detective Sergeant Smith on the first occasion Smith was advised that Heath was "safe and well". On the second occasion Sergeant Williams advised Smith that Heath was stressed and in need of help.

My staff spoke to Sergeant Williams who indicated that Mr Heath was stressed and should be spoken to by a friend or family member.

It is important that Detective Sergeant Williams be interviewed in relation to the information he supplied to Detective Sergeant Smith of the Task Force. The information from Sergeant Williams will confirm the advice that he gave Sergeant Smith and which is outlined in this report. Sergeant Williams is presently in Brisbane on another matter and it would be opportune for a senior member of your staff to obtain this statement.

...2/..
You may be pleased to urgently advise the arrangements put in place to obtain this statement from Detective Sergeant Williams.

Yours sincerely,

TERRY MACKENROTH
Minister for Police and
Emergency Service
CONFIDENTIAL

16 April 1991

Chairman
Criminal Justice
Commission
BRISBANE

Mr. A.R. Lauer, A.P.M.
Commissioner of Police
Police Headquarters
Box 45, G.P.O.

SYDNEY N.S.W. 2001

For your information.

Dear Mr. Lauer

I enclose a copy of a memorandum from my Minister who seeks a statement from a member of your Service relating to the location in Port Macquarie of a member of the Queensland Parliament.

I think the background is self-explanatory from that memorandum, but I do not believe it appropriate that I should endeavour to obtain a statement from a member of your Service, over a matter which is essentially outside the charter of this Service.

I would be grateful if you would consider obtaining a statement from Detective Sergeant Bob Williams, of Port Macquarie C.I. Branch, and providing it through me as early as may be practicable.

Yours sincerely

N.R. NEWNHAM
COMMISSIONER

16.4.91
15 May 1991

Commissioner N.R. Newnham
Queensland Police Service
100 Roma Street
BRISBANE QLD 4000

Dear Noel

I refer to your letter of 16 April 1991 regarding Mr Philip Heath. I have given careful consideration to the issues raised by you and that of the Minister for Police and Emergency Services, the Hon. Terry Mackenroth, MP, regarding this matter.

I am firmly of the view that the provision of a statement by a member of the New South Wales Police Service in this matter to a third party would be a gross intrusion to Mr Heath’s right to privacy. Equally, I am of the view that any further consideration of this matter could only be given subsequent to the written consent of Mr Heath for the information sought to be disclosed.

Yours sincerely

A. R. LAUER
Commissioner
20 May 1991

MINISTER FOR POLICE AND EMERGENCY SERVICES

I refer again to your memorandum of 16 April 1991 requesting that a
statement be obtained from Detective Sergeant Bob Williams, of
Port Macquarie Police, New South Wales.

The Commissioner of Police, New South Wales, has responded to my request
for his assistance, declining that request, unless written consent of Mr. Heath
is provided.

Under all the circumstances, I recommend that this matter not be pursued
further.

N.R. NEWNHAM
COMMISSIONER
The Mercy Dash:  
Compassion, Conceit or Concoction?

The Police and Emergency Services Minister, Mr. Mackenroth, has always cultivated the public image of a tough-talking, tough-acting public avenger, but is he really just a closet softhearted man?

Last month he heard one of his mates had cleared off to Port Macquarie in northern New South Wales and, in a marvellously selfless gesture, Mr. Mackenroth - no doubt inspired by the most noble of motives - rushed off to give that mate the wise, professional counselling that only a qualified welder and Labor numbers man could.

We are expected to believe that the fact the mate just happened to be a runaway Labor M.L.A. was purely incidental and co-incidental.

The history of this so-called “mercy” dash deserves documenting.

For his own reasons, the Labor M.L.A. for Nundah, Mr. Heath, decided he'd had enough of the job and did a bolt. On his way south he sent a letter to the Speaker of Parliament informing him his resignation was effective from 5 p.m. on Friday, April 5. That letter arrived in the Speaker's Office on the following Monday.

Mr. Heath, at the same time, wrote to the Premier, Mr. Goss, telling him the glad tidings. Mr. Goss told Parliament the next week he "became aware at some stage over the weekend of that resignation" but later said he was advised "some time on Monday" there was "a threat or intention to resign".

The Speaker - fortunately enough for the Labor Party - wasn't in his office on Monday to receive the resignation.
letter legally despite the fact everybody - including Mr. Goss by his own admission - knew it was sitting in the in tray ticking away like a time bomb. The Speaker didn’t receive it legally until the Tuesday morning when he turned up at Parliament House.

Over the weekend and on Monday, the Labor Party was in turmoil and anguish over the prospect of an unwanted by-election. Not so the warmly human Mr. Mackenroth whose only concern was the emotional and physical well-being of a fellow human being.

Touching, isn’t it?

According to Mr. Mackenroth, a member of his staff had spoken to a Port Macquarie police officer who had spoken to Mr. Heath and the message was the New South Wales police “were concerned” about Mr. Heath. By the way, Mr. Mackenroth didn’t feel the need to talk to that police officer himself and there is no evidence at all to suggest Mr. Heath ever wanted to talk to Mr. Mackenroth.

At 9.11 p.m. on the Monday night, the Police Communications Centre in Brisbane issued a media release saying Mr. Heath was missing and police wanted to establish he was “safe and well”. At about 10 p.m., a later police bulletin to the media confirmed Mr. Heath was, in fact, “safe and well”.

According to Mr. Goss, Mr. Mackenroth telephoned him to pass on that news “late on Monday evening”.

Now, the rest of us were relieved to hear that news via the media and went to bed knowing a personal tragedy was averted but a by-election was inevitable. Not so the caring Mr. Mackenroth, who either couldn’t accept the police advice, or was so overcome with compassion, that he just had to provide Mr. Heath with the finest professional counselling possible - his own.

When the taxpayers are paying, expense is no object.

At 11.35 p.m., Mr. Mackenroth left Brisbane for a 90 minute round trip to Port Macquarie at a cost of between $3,000 to $4,000 to the taxpayers.

Questioned in Parliament, Mr. Goss said very plainly, "Let me say quite unequivocally that the Minister for Police has my full support and, furthermore, that I endorse the action he took".

Mr. Mackenroth also remained unrepentant and said, "If tonight I again faced the need to make such a decision, I would make exactly the same decision".

Does this man’s noble self-sacrifice know no bounds?

Well, yes it does.

When asked if he would make a similar taxpayer funded late-night mercy dash for an ordinary little taxpayer, he flatly said "no". Even the most caring and sharing of people have to draw the line somewhere, don’t they?

Apparently the line is drawn on the basis of whether or not a person happens to be a Labor M.L.A. who has just quit.
Incidently, guess who has the power and responsibility for approving Ministerial trips on the fleet of Government jets? Yes, it is "Florence" Mackenroth. And just who said this in Parliament during the uproar, "apart from the BAe 125 flight to Port Macquarie last Monday night, it has been used only for medical purposes and by His Excellency the Governor".

Yes, "Florence" Mackenroth again.

Even he, in that reply, inadvertently let the cat out of the bag by admitting his "mercy" dash was not for "medical" purposes - so we can all quickly and reasonably deduce what the real reason was.

I've demanded the A.L.P. pay for the flight - they have refused - and I've asked the Criminal Justice Commission to investigate this blatant and sordid abuse of taxpayers' funds.

And it all happened on the jet Mr. Goss said before the election would be sold and after the election said wouldn't be used by Ministers.

# # # #

Rights, Racehorses and Ripoffs

Late last month, the Auditor-General reported Queensland's Aboriginal and Islander Councils had more than $3 million in outstanding debts. That Report said livestock worth almost $700,000 was missing from Aboriginal communities while the estimated cash and stock shortages for "enterprise operations" totalled $250,000.

It was a damning indictment of the lax management of these Councils and stated, "numerous irregularities and shortages were revealed in the examination of the receipting and banking of monies, payment of creditors and wages and stock control functions".

The Auditor-General also said almost 3,000 cattle and horses had "vanished" during shipment and from fenced properties and holding paddocks at these Councils. However, while vast herds of cattle and mobs of horses had "vanished", another six horses were added to the assets of the Woorabinda Aboriginal Council.

The disclosure about the purchase of these six racehorses by the Council for $24,500 came only days before the Auditor-General's Report and the Government's reaction to both events was curious and contradictory to say the least.

On the matter of the trifling deficiencies revealed by the Auditor-General, the Premier, Mr. Goss, courageously admitted, "there has been a lot of wasted money" and that "many" of the councils "do recognise they have a responsibility to do a better job". It was as close as he would ever come to outright criticism of Aboriginal Councils although he hasn't shown any similar reluctance to give other Councils a right old blast in the past for real or imagined sins.

However, we went on to witness the saga of the racehorses and the Aboriginal Affairs Minister, Ms. Warner, wouldn't hear a breath of criticism of the Council or speak ill of it.
RUNAWAY MP BLAMES GOSS

By GUY KER

RUNAWAY MP Phil Heath has returned to Queensland to moan in with his glamorous ex-secretary and tip a bucket on his former ALP colleagues.

The man whose shock resignation has forced next week's Bundaberg by-election is living with Rachel Monaghan, his former electorate secretary, in her Brisbane riverside flat.

When The Sunday Mail questioned the couple last week at her trendy Woolloongabba apartment, Mr Heath broke his silence on the mystery which has rocked the Goss Labor Government.

He angrily rejected rumors that he had quit politics because of Monaghan or because of the love triangle that helped ruin his marriage. He slammed it on his disillusionment with policies under Premier Wayne Goss.

"You can tell people, tell your readers, that the reasons I resigned are political — not personal and not health," he said. "It's a political crisis.

"Rumors they may have heard, which refer to personal or health reasons, are wrong. The reasons are political.

"When asked whether he had been unable to keep up the pace of reform within the Goss Government, Mr Heath nodded, before jumping into his car and speeding off.

"It's the third time in two months, and it's mockery of the Premier in a message on Ms Monaghan's telephone answering machine."

The recording last week said: "Hello, I'm Wayne Goss. I have to exhibit this in State of Origin week but I have to go for the Blues. Not only is Lang Park full in the by-elections and in the NSW State elections and all of that makes me very blue. If you leave a message I might get back to you.

"Police Minister Terry Mackenross had claimed he was "worried about Phil's welfare" when he flew to Toowoomba by government jet in a bid to head off Mr Heath's resignation."

But Mr Heath made it clear his only problems were with the Government.

"As a member of Attorney-General Dean Wells' parliamentary committee, he had been unhappy with the Government's handling of homophobia reform and had strongly objected to the conservative approach to equal opportunity legislation.

"He also wrote a letter showing his dissatisfaction with the Government's approach to enterprise and corporations."

Mr Heath slipped back into Brisbane to support Ms Monaghan's bid to attend the June State ALP conference as an official delegate — a contrast in which she was directly opposed to the wife of ALP state campaign director Wayne Swan.

However, Ms Swan yesterday said she and Mr Heath had been "good friends" and denied any animosity between them.

Continued, Page 2
MP LIVING WITH HIS SECRETARY

By GREG ABBOTT

RUNAWAY former MP PHI
Heath is back in Brisbane and
living with his former electorate
secretary Rachel Monaghan.
Mr Heath, 56, forced an embar-
nassing by-election in Bundah when in
early April he quit politics, leaving the
ALP, his wife, two children and a pack-
de of evangelists behind him.
Mr Heath and Ms Monaghan are liv-
ing in a unit on Kinross Smith
Drive, Hamilton.

A spruce, fit-looking Mr Heath em-
phasised on Friday that politics had
driven him from Queensland — not
his health nor a marriage break-up.
He said he would not be helping the
ALP in the Bundah by-election cam-
paign but refused to give reasons.

Mother Ms Monaghan barricaded
herself and Mr Heath in the unit and
pledged her self to keep her name
out of print.
Ms Monaghan, 27, worked in the
office of the Federal MP for Laidle
Mrs Elaine Darling, before joining Mr
Heath's office.

Yesterday Mr Heath's wife, Mrs
Jean Heath, attacked what she
claimed were attempts to bring poli-
tics into the issue on the eve of the
by-election next Saturday.
"Only Phil can decide this," she
said.
Mr Heath's surprise exit from poli-
tics involved a nationwide police
search, which followed Ms Monag-
han's concerns over his health and
possible suicidal tendencies.

Police Minister Terry Mackenrath
summoned the 70s jet and raced
a heart-racing machine to Points
outboard in a vain attempt to
persuade Mr Heath to reconsider.

© Continued Page 4
My agony: Wife talks on rift

JEAN Heath spoke for the first time yesterday of the heartbreak she has endured since her husband left her and their two young children late last year.

She said one day her husband was there, and the next she knew he was living with the electoral secretary, Rachel Monaghan.

"I don't know why Phil is trying to throw me out of the blame home to political affairs," Mrs Heath said. She added that her family had struggled through a long time, and it took a year for her to learn poli
tics being taken care of.

She would not go into the details of her marri
age, but said the first time she heard it was when she was told Mr Heath was living with Ms Monaghan. She said she had never seen him since he left in the middle of the night.

"But I don't care any more if you dump on Phil," she said. "I think he is wrong to blame the ALP or politics for this matter."

Mrs Heath said she believed an argument between her husband and Ms Monaghan was the reason for his departure.

Pay for jet use — Opposition

OPPOSITION Leader Russell Cooper last night called on the Government to reimburse taxpayers for the cost of using the Jetstar jet in the Heath affair.

Mr Cooper said that because Mr Heath held politics and not personal reasons, he had to his political
departure. Prime Minister John Howard acknowledged the public need for an apology.

"Failing that, the special prosecutor or the OAG should investigate the use of the Jetstar jet by the Premier and the Liberal government," Mr Cooper said.

Labor Leader Dr Beazley called for a re-evaluation of the use of the government's Jetstar jet in the midnight meetings.

"In view of what Mr Heath is now saying it is de
doubtedly the only reason he left was because of the state of the political party," Mr Beazley said.

Police Minister Terry Mulder said he would not be drawn into Mr Heath's public statement.

Mr Mulder said in his statement at the time that the Jetstar jet was used after receiving a request from Mr Heath for the use of the plane. Mr Heath's walk away was expressed by NSW and Queensland police.

Opposition members have claimed the midnight Heath con
t the taxpayers about $200,000.
Police told Heath as suicidal: Goss

POLICE were told that former parliamentarian Mr Phil Heath was suicidal when he went missing, the Premier, Mr Goss, said yesterday.

He said that in those circumstances the Police Minister, Mr Mackenzie, had used the Government jet to fly to Port Macquarie to check on Mr Heath's condition because "he could not take chances".

Mr Heath said last week that he had resigned as the Labor Member for Mundah and left Brisbane last month for political reasons, not personal or health reasons.

Mr Heath has returned to Brisbane, is separated from his wife and reportedly living with his former electorate secretary.

By ED SOUTHORN and LOUISE GEE

Mr Goss said yesterday: "I feel sorry for Mr Heath and what's happened to him but he's an adult and I feel a lot more sympathy for his family." Heath's wife, Mrs Jean Heath, of Eagle Junction, said she did not report her husband's disappearance but understood the person who did was concerned that he would commit suicide.

Commissioner Newnham said when Mr Heath fled to Port Macquarie he went to the police station and reported he was not missing.

Leehy cartoon, Page 8.
Police files back
Govt claims that
MP was ‘suicidal’

FORMER Nundah MP Mr Phil Heath was depressed because of a “sour dinner conversation”, police files show.

The Police Minister, Mr Mackenzeth, last night released the files which showed that Mr Heath’s electorate secretary, Ms Rachel Monaghan, reported him missing, gave the reason for his depression and said he was possibly suicidal.

On television last night, Mr Heath denied he had been suicidal.

The police files show Ms Monaghan reported Mr Heath missing on April 4.

On April 8, Det Sgt Bob Williams of Port Macquarie CIB had telephoned Queensland police to advise that Mr Heath was in that station.

Queensland police then spoke to Mr Heath, forming the opinion he was lucid and calm and again to Sgt Williams who said Mr Heath appeared well and not disturbed in any way.

But Sgt Williams telephoned Queensland police soon afterwards, saying he could not talk fully on the phone earlier as Mr Heath was in the office.

Sgt Williams had then said he thought Mr Heath required assistance.

The Queensland Police Com-

missioner, Mr Newsham, confirmed that Mr Heath had contacted Port Macquarie police to tell them he was safe and well.

“The New South Wales police reported to Queensland police that Mr Heath, while safe, was not well and was in a distressed state.”

“That information was passed on to the Police Minister, Mr Mackenzeth.”

Mr Newsham said he was concerned about media reports that distorted the “simple fact that the Minister was told Mr Heath was distressed and unwell”.

Mr Heath last night said his resignation and disappearance to Port Macquarie prompting a Government jet dash after him had nothing to do with personal or health problems.

He said he had not been suicidal as Ms Goss had said.

There had been attempts to persuade him to return to Brisbane and withdraw his resignation because of the ramifications of a by-election in Nundah.

He had been offered time off from Parliament if he returned and resigned at the Government’s convenience — after a by-election had been set up or prepared for.

“But I would not do that,” Mr Heath said. “I had had enough of the disappointment I had with the ALP and the Government and the way things have turned out in Queensland.”

The recent failed referendum question on four-year parliamentary terms was one area where policy had been abandoned.

Mr Heath said he had no personal problems and although his marriage had broken down eight and a half months ago this had not affected his work.
28th May, 1991

The Chairman,
Criminal Justice Commission,
P.O. BOX 157,
NORTH QUAY. QLD. 4002

Dear Sir Max,

I refer to your letter of the 20th instant in relation to a complaint by the Leader of the Opposition in relation to the use of a Government aircraft by the Honourable T.J. Mackenroth, M.L.A., the Minister for Police and Emergency Services.

Pursuant to your request for a copy of guidelines I enclose herewith a document entitled "Usage of Aircraft and Helicopters by Ministers of the Crown" issued by the Bureau of Emergency Services in January 1991.

In relation to your invitation for myself to make any comment or submission in respect of this matter, I believe it is appropriate to confirm public statements made by myself to the effect that prior to using the Government aircraft to fly to Port Macquarie in Northern New South Wales the Minister for Police and Emergency Services telephoned me at my home to seek my opinion.

In my telephone discussion with the Minister I agreed with him that it was appropriate that he endeavour to speak personally with Mr Heath about his future, and, given concerns expressed in relation to Mr Heath's emotional state and welfare generally that it would be appropriate and of assistance to have Mr Heath's father accompany Mr Mackenroth. The basis of this opinion was primarily a report to the police by the person reported to be a close friend of Mr Heath to the effect that on the preceding Friday evening he had left his place of residence suddenly, without taking any belongings and had fled to places unknown. The report given to police by this person further suggested that Mr Heath was depressed and "suicidal".
Subsequently I understand that Mr Heath was contacted by New South Wales police and after Mr Heath advised Queensland police that he was well, New South Wales police telephoned Queensland Police after Mr Heath had left the room to express concern about his welfare and to suggest that he needed assistance.

Mr Mackenroth further advised me of a telephone conversation that he had had on the Friday afternoon prior to Mr Heath going missing, that telephone conversation with Mr Heath was quite business-like and usual in relation to a speech that Mr Heath was planning to make in Parliament the following week. Mr Mackenroth was obviously struck by the contrast between that conversation and the reported events that occurred some hours later that evening.

Irrespective of what Mr Heath now claims was his state of mind and reasons for acting in the unusual way that he did, Mr Mackenroth had to form an opinion based on the information made available to him by police.

Furthermore, I would also note that in addition Mr Mackenroth holds the position of Leader of the House and with that goes certain other responsibilities. Parliament was due to sit the morning after the flight to Port Macquarie and it would have been appropriate for Mr Heath to return to Brisbane and discharge his duty to attend Parliament, travelling on the Government aircraft if in fact it transpired that his behaviour was in some way an aberration and that the advice and counselling from Mr Mackenroth and Mr Heath’s father had resulted in him resuming his normal life in all respects.

Another matter that I would mention is that in my view a Government, and leadership of any party for that matter, has a responsibility where practicable and reasonable, to avoid the community incurring the cost and inconvenience of a by-election.

I would also note that during the last Parliament the then Government flew the Government jet to Darwin to fly a member to Brisbane for the purpose of attending to Parliament.

I trust the above information and comments are of some assistance in the deliberations.

Yours faithfully,

Wayne Goss
DIVISION OF AVIATION SERVICES

(MINISTERIAL AIR UNIT AND STATE GOVERNMENT HELICOPTERS)

USAGE OF AIRCRAFT AND HELICOPTERS

- BY -

MINISTERS OF THE CROWN

Bureau of Emergency Services

Brisbane

January 1991
1. **AIRCRAFT AND HELICOPTERS**

The Bureau of Emergency Services operates a Westwind II jet aircraft, a Super Kingair 200 aircraft, a twin-engine IFR helicopter (based in Brisbane) and a single-engine VFR helicopter (based in Cairns).

The seating capacity of the Westwind is seven (7) passengers, the Kingair is eight (8) passengers, while the helicopters carry three (3) passengers each. The helicopters have a limited range capacity and operate within a 150 km radius of Brisbane and Cairns.

All of the above aircraft are available for Ministerial use in limited circumstances. However, priority at all times will be given to community service and emergency service operations.

The Westwind, Kingair and the Brisbane-based helicopter operate out of the Government Air Facility, Pandanus Avenue, Pinkenba (located within the Ansett maintenance area), while the Cairns-based helicopter operates out of the DC3 Queensland Hangar at Cairns Airport.

If required, the Brisbane-based helicopter can also operate from the Brisbane River helipad adjacent to the Freeway at the rear of the Executive Building.

The Police Department Air Unit also operates aircraft, but they are not available for Ministerial use other than by the Police Minister in his official capacity.
2. ADMINISTRATION

Both the Ministerial Air Unit and the helicopters are under the administrative control of the Aviation Services Division, Bureau of Emergency Services.

Full costs of the operation of the aircraft and the helicopters will be met by the Bureau of Emergency Services. However, overnight and travelling expenses of the pilots will be a charge against the Ministerial Office concerned. Booking arrangements for pilots' accommodation and travel should also be made by the Ministerial Office concerned.

Contact officers for enquiries and other information is as follows:

Ministerial Air Unit/Helicopter (Brisbane only)

- **Enquiries**: Mr Bruce Hermanssen
  - Executive Officer
  - Bureau of Emergency Services
  - (Telephone 07/227 5071)
  - (Facsimile 07/221 5440)

- **Chief Pilots**: Mr Peter Shire – Fixed Wing
  - Mr Richard Blackwell – Helicopters

- **Itineraries**: Facsimile 07/860 4421

Cairns Helicopter

- **Enquiries**: Regional Operations Officer
  - Cairns State Emergency Service
  - (Telephone 07/052 3255)

- **Chief Pilot**: Mr Richard Blackwell

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- 2 -
3. **GUIDELINES**

The Westwind, Super Kingair 200 aircraft and the helicopters' prime functions are to service community requirements. Accordingly, emergency service operations will, at all times, have priority over all other flights and it may be necessary to cancel approved flights at short notice to service those requirements.

As a general rule, the following conditions will apply to aircraft use:

- The Minister for Police and Emergency Services will decide, on a case by case basis, whether circumstances warrant the use of the aircraft by a Minister or a Department.

- The aircraft are not a substitute for normal commercial travel and should only be used when alternative means are not adequate to service a Minister's official requirements.

- Travel to and from a Minister's Electorate shall not be made in the aircraft unless that travel is to a specific function which is related to the discharge of a Minister's official responsibilities (i.e. portfolio related).

- Departmental use of the aircraft is precluded unless the Departmental officers are accompanied by a Minister or, the travel is in response to an identified high priority need of the Government and that travel cannot be adequately provided by normal commercial means.

- The aircraft are not available for travel solely within a Minister's Electorate.

As it is uneconomical for the aircraft to operate on the basis of a one-way flight, returning to Brisbane empty, approval will not be given except in exceptional circumstances for trips of this nature.
5. OPERATION OF AIRCRAFT AND HELICOPTERS

For flight planning purposes, the pilot needs to be fully informed of times for all flights and a list of passenger names for each route section. Accordingly, Ministers must submit to the Ministerial Air Unit an up-to-date copy of the itinerary for each flight in the Westwind and Kingair on the day preceding the actual flight.

These details should be faxed to the Government Air Facility at Brisbane Airport (07/860 4421) on the day before each flight.

When planning a trip in the Westwind and Kingair, Ministers should bear in mind that pilots' duty times are not allowed to exceed 10 hours on any one day.

As the Government helicopters generally operate within a 150 km radius of Brisbane and Cairns, it is not necessary to fax an itinerary of the flight in advance.
6. **USE OF CHARTER AIRCRAFT**

If a request for an aircraft from the Bureau of Emergency Services cannot be met, then a Minister may charter an aircraft from a private charter firm for the purpose in hand.

In the case of air travel within a Minister's Electorate, a charter from a private charter firm can be arranged locally by that Minister.

In the above cases all charges associated with the charter's including provisioning, shall be the responsibility of the Minister concerned.
24 June 1991

Sir Max Bingham, QC
Chairman
Criminal Justice Commission
PO Box 157
NORTH QUAY QLD 4002

Dear Sir Max,

I refer to your letter of 12 June 1991 regarding an inquiry presently being conducted by the Commission in relation to the disappearance and subsequent location of a former Member of the Queensland Parliament, Mr Phillip Heath.

Attached for your information is a report by Detective Sergeant R B Williams of Port Macquarie Police Station together with copies of occurrence pad entries in relation to this matter.

Should the information contained therein be insufficient for your purposes then I have no objection to an Officer from your Commission making direct contact with Detective Sergeant Williams.

Yours sincerely,

A R LAUER
Commissioner

Attach
The Patrol Commander,
Port Macquarie.

Inquiry by the Criminal Justice Commission, Queensland into the alleged actions of a member of the Queensland Parliament.

1. About 4.30pm on Monday the 8th of April, 1981 Detective Kerry Dunn, then of the Homicide Unit, Brisbane telephoned the Detective’s Office at the Port Macquarie Police Station and spoke to myself. Detective Dunn stated that a Mr. Philip Arthur Heath, born 24.8.54, then a sitting member of the Queensland Parliament, had been reported as a missing person in the State of Queensland. He stated that Heath had been last seen in Brisbane on the evening of Friday the 5th of April, 1981 at 11pm and that it appeared that he was suffering depression.

2. Detective Dunn stated that his inquiries revealed that three withdrawals had been made at the St. George Building Society’s automatic tellling machine, Horton Street, Port Macquarie with the last being on the afternoon of the 8th of April, 1981.

3. Detective Dunn supplied details of Mr. Heath and the vehicle he was believed to be driving. He requested that we keep a lookout for Mr. Heath and asked that should Mr. Heath be located that either he or the Duty Inspector at Brisbane be contacted.

4. I recorded this information on the Occurrence Pad at the Port Macquarie Police Station and had inquiries made of the local accommodation in an effort to locate Mr. Heath.

5. About 9.20pm that same evening, whilst off duty, I recognised the vehicle that Mr. Heath was believed to be travelling in and I followed it to the Sundowner Buekwall Caravan Park, Port Macquarie where I spoke to Mr. Heath. I explained to him that he had been reported as a missing person in Brisbane and requested him to go with me to the Port Macquarie Police Station where he could telephone Brisbane. This he agreed to do, but stated that he would only speak to the Queensland Police.

6. Mr. Heath accompanied me to the Police Station where, in the presence of Mr. Heath, I telephoned the Duty Inspector, Brisbane, an Inspector Steve Smith, and told him that Mr. Heath was present and wished to speak to him. This Mr. Heath did after which I took Mr. Heath back to the caravan park.
7. I returned to the Police Station and again called Inspector Smith and told him that it was my unqualified opinion that Mr. Heath was in a stressed state. I emphasised the fact that it was my unqualified opinion.

8. Shortly after I was contacted by Mr. Garry Hanigan, the Secretary to the Minister of Police, Queensland, who told me that the Minister, Mr. Terrence Mackenroth, himself and Mr. Philip Heath's father would be flying to Port Macquarie that evening so that they could speak to Mr. Heath. This they in fact did, arriving at the Port Macquarie Airport at 12.00 am the following morning in a jet aircraft. I met them at the airport and on their arrival was told that Mr. Philip Heath had tendered his resignation from the Queensland Parliament unexpectedly and that he had been having some domestic problems. I was further told that there was concern for Mr. Heath and that they would be endeavouring to have him return to Brisbane with them to Brisbane before the Queensland Parliament resumed which was 10 am that day. They wished to do this so that he could withdraw his resignation and allow himself time for reconsideration of his actions.

9. I took Mr. Mackenroth, Mr. Hanigan and Mr. Heath, Snr., to the Sundowner Breakwall Caravan Park where they had lengthy discussions with Mr. Philip Heath, but I was not present at any time during those discussions.

10. After these discussions I returned Mr. Mackenroth, Mr. Hanigan and Mr. Heath, Snr., to the Port Macquarie Airport where they boarded the aircraft and departed at 2.45 am that same morning.

11. The aircraft they were travelling in was a jet aircraft registered number VH-LNV and the pilot of that aircraft, to my knowledge, remained on the aircraft whilst at Port Macquarie.

12. Attached hereto are copies of the Occurrence Pad entries at the Port Macquarie Police Station relevant to these events.

13. Perhaps these papers might now be returned to the District Commander's Office, Port Macquarie please.

Robert E. Williams,
Detective Sergeant,
Police Station, Port Macquarie, 2444,
16th June, 1981.
CJC SUBMISSION TO PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

on

MONITORING AND REVIEWING THE CRIMINAL JUSTICE COMMISSION

26 APRIL 1991
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EXECUTIVE SUMMARY

The Criminal Justice Commission is a unique organisation. It encompasses almost all aspects of the criminal justice system. It has investigative, law enforcement, intelligence, witness protection, adjudicative and research functions. These functions are usually performed by three or four organisations in other jurisdictions.

Because of the wide-ranging activities of the organisation it was a daunting task to recruit appropriately qualified staff. At this stage the Commission has reached its full complement, however certain aspects of its operations need fine tuning.

History shows that an organisation emerging as a result of an inquiry like the Fitzgerald Inquiry necessarily raises public expectations. However there is little appreciation of the fact that the problem of corruption, particularly of such a widespread and deep-rooted nature, is very difficult to eliminate.

The Committee has an immediate important role to perform in educating the community as to the functions of the Commission. This submission may assist in this task.

OFFICIAL MISCONDUCT DIVISION

Following on the heels of the Fitzgerald Inquiry, the Criminal Justice Commission is a highly misunderstood entity. Its perceived role ranges from being a body with investigative power to undertake willy-nilly the investigation of crime in Queensland to an agency with a universal remedy for all crime and criminal justice problems. It is also portrayed as an organisation with unlimited resources. These misconceptions have contributed to a substantial amount of criticism, of which the Official Misconduct Division has received a lion’s share.

The Official Misconduct Division (OMD) is the investigative arm of the Commission. The Division’s structure follows the model recommended by the Fitzgerald Report and currently employs the services of 71 police officers, 50 of whom are investigators. Ever since the promulgation of the Act in its entirety, the demands for the Division’s services have escalated.

The Division has a major function in the organised crime area and has had some major achievements (p.73). The Division plans to introduce initiatives in respect of more sophisticated and long term endeavours to investigate organised crime.

The Division has also established a Criminal Assets Section, which is making a major contribution to the effective use of the Crimes (Confiscation of Profits) Act 1989–90. Assets in excess of $4.4m are currently frozen and investigations now under way involve similar or greater amounts (p.89).

The Division is also developing its resources in the corruption prevention area and will soon appoint a specialist senior officer to co-ordinate the provision of corruption
prevention services to other agencies. The overall approach is to promote corruption prevention as an integral aspect of good management (p.88).

The Division receives complaints not only against the officers of the Queensland Police Service but also against any public servant. However, three out of four complaints received are against police officers. Twelve months after the proclamation in full of the Act the Division has amassed a substantial backlog in the investigation of complaints. With the existing resources it is not possible to reduce the backlog significantly in the near future. The choices facing the Division are stark: either increase the resources of the complaints area by 100% or adopt a filtering process whereby only a selection of complaints, approximately half of the present receivals, is investigated by the Commission with the remainder being referred to outside agencies, in the main to the Queensland Police Service. It seeks the Committee's support in its determination as to which of the choices it should make and has proposals in hand for discussion with the committee.

In spite of its present handicap in terms of resources, the Division has significantly increased its efficiency in investigating complaints. Compared to the performance of the former Police Complaints Tribunal, Queensland, as well as similar interstate bodies, the Division's workload has been higher and the number of complaints investigated by the Division has also been far greater (pp.30–32).

WITNESS PROTECTION

The Act clearly places the responsibility to provide a witness protection service with the Commission. Australia does not have a credible national witness protection service. The Commission takes the view that witness protection is an issue which requires considerable planning so that it can respond to all types of problems. The Commission is endeavouring to provide witness protection services in the most cost effective fashion possible and the Witness Protection Division is determined that its operation will be a model of professionalism. It is clear that the Commission's initiatives in this area are being watched with considerable interest by other jurisdictions in Australia.

RESEARCH AND CO-ORDINATION DIVISION

The Act did not recommend any specific research but instead offered a mandate to the Research and Co-Ordination Division to conduct research into the functioning and administration of criminal justice in the State. It was left to the Division to define what was urgent and what could be postponed. The quantum of research in Queensland in the criminal justice area was virtually non-existent. That made the task of the Division even more difficult.

Initially a list of priority projects was formulated, however public demand for systematic information on a number of issues resulted in seriously overloading the capabilities of the Division. Substantial initiatives have been taken (p.108).

The Division is conscious of the importance of the opinions of the wider community, particularly in the areas where recommendations to amend laws need to be made. It was
therefore decided to systematically solicit public participation in research projects through submissions of various types. This method has been of substantial value to the Division's work.

INTELLIGENCE DIVISION

The main function of the Division is to establish a database of intelligence information concerning criminal activities and their perpetrators. Criminal activities are not confined to a specific geographic area. In its work, therefore, the Division requires the assistance and co-operation of agencies within and outside Queensland and has established formal relations with most such agencies.

The intelligence function, though essential, has the potential to arouse public disquiet. Conscious of this, the Division formulated and released publicly the guidelines under which it would operate. These guidelines anticipate the requirements of Privacy and Freedom of Information legislation. The Commission is not aware of any Australian precedent for such action by an Intelligence Agency (p.121).

The Division has reviewed the Bureau of Criminal Intelligence of Queensland and made recommendations of changes that are gradually being implemented by the Queensland Police Service. The former Police Special Branch has been abolished and its essential functions assumed by a Counter Terrorism Section, operating under a published charter and close supervision (p.124).

The Division is providing training not only for its own staff but for staff of other law enforcement agencies (p.122).

SECRETARIAT

The Secretariat (known as the Corporate Services Division and headed by the Executive Director) plays a pivotal role in the operational functions of the Commission. Apart from carrying out its personnel, administration, information and financial management functions, the Secretariat has introduced some innovative measures. Computer-generated internal financial management reports, computerised vehicle management system and a detailed record system are just a few of these (p.125). The Executive Director serves as the Secretary to the Commission.

OFFICE OF GENERAL COUNSEL

The office plays an independent role in the Commission. It provides advice on legal and policy issues to the Commission, its organisational units and often to other agencies. It develops forms and procedures to ensure strict vetting of Commission staff and to guarantee the Commission's accountability in the exercise of its statutory powers.

Through appropriate rules and procedures, the office oversees the operation of the Misconduct Tribunals and the lawyers of the office assist the Tribunals. Among many
other functions, the office of the General Counsel appears in legal proceedings involving the Commission, responds to papers on a wide range of issues and participates in review committees and working parties on criminal justice matters.

THE MISCONDUCT TRIBUNALS

The Tribunals are an organisational unit of the Commission. Each Tribunal is constituted by one member nominated by the Chairman. The Tribunals have original jurisdiction to investigate and determine every charge of a disciplinary nature of official misconduct made against a member of the Queensland Police Service, and also an appellate jurisdiction in respect of minor disciplinary matters (p.139).

COMMISSIONERS FOR POLICE SERVICE REVIEWS

The Review Commissioners hear applications by members of the Queensland Police Service in respect of transfers, promotions, stand-downs and certain administrative decisions. It is a new process which offers an informal mechanism to review such decisions. The decisions of the Review Commissioners are in the form of recommendations to the Commissioner of Police. However, should he not accept a decision the Commissioner of Police is required to provide a brief summary of reasons. The Review Commissioners are nominated by the Chairman of the Commission.

PROCEDURAL FAIRNESS

The Commission, depending upon the subject matter and nature of evidence, holds public or private hearings. In deciding on the type of hearing, the Commission pays due regard to the principles of natural justice and to the public interest. Detailed procedures have been established (p.151).

In preparing and releasing research and other reports, the Commission where possible makes conscious efforts to seek the input of the wider community. This may be done through the release of issues papers, invitations for submissions from the public and interest groups, and through public hearings.

ACCOUNTABILITY AND SECRECY

The Commission, through a series of procedures and practices, has ensured that it is accountable to the Parliamentary Committee. The Commission holds public hearings, invites public submissions on a wide range of criminal justice issues, responds to media inquiries, and participates in public seminars and lectures, as well as issuing reports.

The Act further ensures that the Commission maintains a balance between the disclosure of information in its possession and the necessity for confidentiality so that it does not suffer from the pains of excessive secrecy.

EXERCISE OF STATUTORY POWERS
The exercise of the Commission's statutory powers is strictly documented to ensure accountability. The exercise of many of these powers is also subject to the supervision of the Supreme Court.
INTRODUCTION

The Criminal Justice Commission (The Commission) welcomes the decision by the Parliamentary Criminal Justice Committee to undertake a major review of its work at what is almost exactly the end of its first year of operation. The following submission indicates the breadth and complexity of the Commission's tasks and provides some measure of its performance.

In the scope of its activities and responsibilities, the Commission is a unique organisation in Australia, combining under the one umbrella activities as diverse as intelligence gathering and analysis, law reform research, corruption and organised crime investigations, overseeing police reform, complaint resolution, corruption prevention education and witness protection.

The Commission is also a very young organisation. The Criminal Justice Act received assent on 31 October 1989. However, the major portion of the Act was proclaimed to take effect until 22 April 1990.

Much was demanded of the Commission during its establishment phase. While seeking to establish a complex organisation with no role models in this nation for many of its tasks, the Commission also performed the continuing functions of the (Fitzgerald) Commission of Inquiry and assumed the backlog of work accumulated by the Police Internal Investigations Section and the Police Complaints Tribunal. A high level of assistance was required for the reform process in the Police Service and also by the Office of the Special Prosecutor. Staff with the necessary specialised skills were, and remain, in short supply, particularly within Queensland. The task of recruitment and consequently that of establishment has been prolonged and difficult.

The Commission was the result of and is the direct successor to the Fitzgerald Inquiry. One dominant theme of that Inquiry was the lack of accountability in the public life of the State.

Given its heritage, the Commission has been very concerned with its own accountability. The intent in the Report of the Commission of Inquiry (Fitzgerald Report), enshrined in the Criminal Justice Act 1989–90 (the Act), was that the Commission would be in the first instance accountable to the Parliament through the Parliamentary Criminal Justice Committee. However, beyond statutory requirements, the Commission has wherever possible acted to ensure that its own internal procedures are beyond reproach. Some such examples of the Commission's own actions to ensure accountability are the requirement for all staff to submit declarations of personal and financial particulars; the implementation of procedures for all allegations of misconduct against Commission staff to be investigated independently of the Commission; and the first ever (in Australia) public release of guidelines for the collection and maintenance of intelligence files on individuals and organisations.

The Commission recently concluded its own internal review of its establishment and operations and the review by the Committee is welcomed as a further opportunity to analyse its own performance in this, its first year of operation. The Commission is not immune to error and does not resent honest criticism. In many ways both the Committee
and the Commission are charting new territory and there is much to be learned from experience and the analysis of others.

The Commission views community concern about the discharge of its functions as legitimate and it is anxious to assist in the Committee's review. Concerns about bodies such as this Commission are not new; similar concerns about openness and secrecy and the question of damage to reputation were recently addressed by the NSW Parliamentary Committee on the Independent Commission Against Corruption (ICAC). In a submission to that Committee Mr G.E. Fitzgerald Q.C. noted that:

"A frequent difficulty in addressing issues such as those with which your committee is concerned is our reluctance, as a community, to acknowledge that there are no solutions which do not have disadvantages as well as advantages.

Fundamental public and private interests are in competition. On the one hand, there are requirements of openness, accountability, an informed public and freedom of the press. Conflicting demands include privacy and perhaps reputation and fair trial. Choices and compromises must be made, both in terms of general social policy and, where a residual discretion exists, on a case by case basis."¹

Although some actions of the Commission have attracted a great deal of comment, the great bulk of its work has escaped public notice. It is therefore of some value for this submission to detail the overall work of the Commission as a prelude to detailed discussion of the matters in which the Committee has expressed particular interest, namely procedural fairness and the preparation of reports, hearing procedures, secrecy and accountability, and the exercise by the Commission of its statutory powers.²

The Commission's discharge of its responsibilities, as enunciated in the Act and the Fitzgerald Report, is best discussed under the heading of the Commission's various Divisions, following a brief overview of the Commission.

¹ Parliament of NSW Committee on the ICAC, Inquiry into Commission Procedures and The Rights of Witnesses, First Report, November 1990, p.276

² Call for Public Submissions on Monitoring and Reviewing the Criminal Justice Commission, press advertisement 16 February 1991
DISCHARGE OF FUNCTIONS AND RESPONSIBILITIES

AN OVERVIEW OF THE COMMISSION

OBJECTS, FUNCTIONS AND RESPONSIBILITIES

The Commission was a recommendation of the Fitzgerald Inquiry, given legislative force by the Act.

The Act provides for "the establishment and maintenance of a permanent body:

(i) to advise on the administration of the criminal justice system in Queensland with a view to ensuring its efficiency and impartiality;

(ii) to continue investigations commenced by the Fitzgerald Inquiry;

(iii) to investigate the incidence of organised or major crime;

(iv) to take measures to combat organised or major crime for an interim period;

(v) to investigate complaints of official misconduct referred to the body and to secure the taking of appropriate action in respect of official misconduct;

(vi) to hear and determine disciplinary charges of official misconduct in prescribed circumstances;

(vii) to discharge such functions and responsibilities as are incidental to or in aid of discharge of the functions and responsibilities referred to in the foregoing provisions of this section ...".3

As stated in the Act the functions of the Commission are to:

"(a) continually monitor, review, co-ordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice.

(b) discharge such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police force or other agencies of the State."4

The Commission's responsibilities are listed as follows:

"(a) the acquisition and maintenance of the resources, skills, training and leadership necessary for the efficient administration of criminal justice;

---

3 The Act, s.1.3(a)

4 ibid, s.2.14 (1)
monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally;

monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies including the offices of the Director of Prosecutions and of the Public Defender;

overseeing criminal intelligence matters and managing criminal intelligence with specific significance to major crime, organised crime and official misconduct;

researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State;

in discharge of such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police Force or other agencies of the State, undertaking:

(i) research and co-ordination of the processes of criminal law reform;

(ii) matters of witness protection;

(iii) investigation of official corruption in units of public administration;

(iv) investigation or organised of major crime.

monitoring the performance of the Police Force with a view to ensuring that the most appropriate policing methods are being used, consistently with trends in nature and incidence of crime, and to ensuring the ability of the Police Force to respond to those trends;

providing the Commissioner of Police with policy directives based on the Commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources;

overseeing reform of the Police Force;

reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (in particular, organised crime) and the efficiency of law enforcement by the Police Force;
(k) reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the Fitzgerald Report relating to the administration of criminal justice, and to the Police Force;

(l) taking such action as the Commission considers to be necessary or desirable in respect of such matters as, in the Commission's opinion, are pertinent to the administration of criminal justice.5

ORGANISATION

As envisaged in the Fitzgerald Report and the Act, the Commission consists of the following organisational units6:

- Official Misconduct Division;
- Misconduct Tribunals;
- Research and Co-ordination Division;
- Intelligence Division;
- Witness Protection Division;

complemented by a Secretariat (referred to as the Corporate Services Division). A General Counsel was appointed to provide legal services to the Commission. The requirements of the Commission and other agencies have led to this evolving into the Office of General Counsel.

The structure of the Commission as envisaged in the Fitzgerald Report7 is detailed on page (6) (Figure 1) and the structure that has evolved closely follows that pattern.

5 ibid, s.2.15
6 ibid, s.2.12(1)
7 The Fitzgerald Report, Figure 10.1, p.312
PROPOSED ORGANISATIONAL STRUCTURE AS PER THE FITZGERALD REPORT

Figure 1

Parliament

Parliamentary Criminal Justice Committee

Minister

Criminal Justice Commission (Chairman & Members)

Executive Director

Secretariat

Official Misconduct Division
Misconduct Tribunals
Research & Co-ordination Division
Intelligence Division
Witness Protection Division
The Commission has an establishment of 263, including some 94 seconded police officers, broken down into Divisions as follows:

<table>
<thead>
<tr>
<th>Organisational Unit</th>
<th>Establishment</th>
<th>Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Misconduct Tribunal</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Office of General Counsel</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Official Misconduct Division</td>
<td>142</td>
<td>114</td>
</tr>
<tr>
<td>Witness Protection Division</td>
<td>32</td>
<td>26</td>
</tr>
<tr>
<td>Research &amp; Co-ordination Division</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Intelligence Division</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>Corporate Services Division</td>
<td>37</td>
<td>35</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>263</strong></td>
<td><strong>221</strong></td>
</tr>
</tbody>
</table>

Not all positions have been filled. Currently 221 staff are attached to the Commission.

These figures readily show the major role of the Official Misconduct Division in the overall work of the Commission.

**BUDGET**

At the beginning of this financial year the Commission received an appropriation of $20m. In January, 1991, as part of the regular review process of the Commission's financial operations, the Chairman foreshadowed to the Honourable the Premier an anticipated surplus of funds as at 30 June 1991.

Following subsequent detailed discussions with officers of the Treasury and Premier's Departments, the Commission submitted a revised budget identifying an anticipated surplus of $3m. Accordingly, the Commission is operating on the basis of a $17m expenditure limit.

Officers performing police work form approximately one third of the Commission's staff establishment. Salaries for these police officers are paid by the Police Service which in turn is reimbursed from Commission funds. Salaries and associated costs attributable to the Police establishment is estimated to be $5.9m whilst that of the civilian component is approximately $6.6m.

While the appropriation may appear a significant sum, it should be interpreted in the light of the Commission's wide areas of responsibility, taking account of the following factors:

- $5.9m has been allocated to the payment of salaries for police performing police duties within the Commission. Overall, the total costs associated with all police functions approximates $7m.
The Commission has assumed the functions of the Police Complaints Tribunal (previously $36m annually) and the Police Internal Investigations Section (previously $47m annually). Additionally, the Commission is obliged to investigate all cases of alleged or suspected official misconduct by persons holding appointments in units of public administration, rather than the police alone.\(^8\)

The Commission assumed the ongoing responsibilities of the Fitzgerald Inquiry.

It is not possible to have an organisation with the responsibilities of the Commission on a shoestring. Considering just some of those activities, Commissioner G.E. Fitzgerald Q.C. stated:

"One possibility which will be discussed in due course in the Commission's Report is a permanent anti-corruption commission, although it must be understood that it is not possible to have such an organisation for the cost of a handful of employed lawyers and police officers. The work which is involved is labour and resource intensive. Administrative, clerical and secretarial staff, specialists such as information analysts, premises, computers, word processors, fax machines, photocopiers, telephones, radios, cameras, motor vehicles etc. are all basic necessities."\(^9\)

It is therefore fair to put the incremental cost of the Commission for this financial year at approximately $10m.

However, certain of the Commission's activities have the potential to add considerably to revenue and contribute to efficiency in public administration. Some of these can be categorised as follows:

The Commission's existence and activities are intended to lessen corruption and organised crime and the economic and revenue losses from these activities. These can be very considerable. For instance illegal bookmaking, the subject of a current study by the Commission is conservatively estimated to cost the revenue $16m and the State's legal economy $30m. The Commission's study will produce recommendations aimed at minimising these losses.

The Commission, in conjunction with the Queensland Police Service and the Director of Prosecutions, is active in the field of recovering proceeds of criminal activity. The potential benefit to revenue from increased use of Proceeds of Crime legislation is considerable. The Commission is also actively researching the more effective use of the legislation and any improvements that may be necessary to it.

The Commission is engaged in a considerable body of research into the criminal justice system generally. One of the issues being addressed is the cost effectiveness of current procedures and recommendations will be made for improvements. In the longer term, the savings are expected to be considerable.

\(^8\) The Act, s.2.20(e)

\(^9\) The Fitzgerald Report, Appendix 15 p.A212
The Commission is particularly conscious of the need for total financial accountability and, as such, is keen to ensure its operational expenses are kept to a minimum. Staff are currently examining the feasibility of charging for goods and services provided to external bodies.

Examples include the sale of publications and the recovery of expenses associated with the provision of witness protection on behalf of other agencies. Such action is consistent with the provisions of Part 3 Division 2 of the Public Finance Standards and should also be of assistance in ensuring the rational allocation of resources to various programs.
OFFICIAL MISCONDUCT DIVISION

Introduction

Any review of press, Parliamentary and public comment upon the law enforcement function of the Commission indicates a widespread misunderstanding of the Commission's true law enforcement role. To many it is considered a second police force, to others an organisation with a wide and substantially unbridled capacity to right wrongs, to interfere with the criminal justice process and to undertake willy-nilly the investigation of crime in Queensland. It is portrayed as a monolithic organisation with unlimited resources. The truth is somewhat less than this.

The whole of the Official Misconduct Division (OMD), the investigative arm of the Commission, has available to it the services of 71 police officers, 50 of whom are investigators. This represents approximately one percent of the total establishment of the Queensland Police Service (QPS). The OMD is limited to investigating official misconduct and major and organised crime not effectively pursued by the Police Service, and not much more. The Division has been established as nearly as possible according to the model suggested by the Fitzgerald Report, initially against the background of a continuation of the work of the Fitzgerald Inquiry but latterly while coping with a massive demand for its services and a severe shortage of investigative personnel.

The substantial backlog in the investigation of complaints against police and public officials which has been generated is a matter of deep concern to the Commission. Twelve months after the proclamation in full of the Act, the Commission is at a crossroads in its dealing with complaint matters and seeks the Committee's assistance in determining which road to follow, either a doubling of resources in the Complaints area to address the backlog and the flow of complaints, or the adoption of a filtering process whereby only a selection of complaints, approximating one half of present receivals, is investigated by the Commission, the remainder being referred to outside agencies, in the main to the Queensland Police Service.

In addition to complaints, twelve months of full scale operation has brought the OMD to a second intersection, namely that relating to the discharge of its major and organised crime function. The Division seeks the Committee's support in its determination as to the approach which should attend its operations in this area, in particular the initiatives which it proposes to take in respect of more sophisticated and longer term endeavours to investigate organised crime.

The Division is moving to establish an anti-corruption capacity which will be preventative rather than responsive in character. The trail in this regard has been blazed by the Independent Commission Against Corruption in New South Wales which continues to render great assistance to the Commission.

The overriding influence which has operated upon the OMD during the first twelve months of full operation has been its establishment and structuring as recommended by Mr Fitzgerald Q.C. against a background of a burgeoning demand for its services.
In terms of staff and resources the OMD is the major organisational unit of the Commission. Its establishment and some guidelines for its operation were recommended in the Fitzgerald Report; with some variations these recommendations were given legislative force in the Act. In summary, the OMD receives, investigates and resolves complaints of official misconduct, conducts investigations of misconduct, conducts or assists in investigation of major or organised crime beyond the capability of the Queensland Police Service, acts to prevent corruption and has established a capacity to recover the proceeds of crime.

The OMD consists of a Directorate, a Complaints Section and a number of Multi-disciplinary investigative teams. Further investigative support is provided by Surveillance and Technical Units and by the Commission's Director of Operations, an Assistant Commissioner of Police who is also the commander of the Commission's Police Establishment.

The process of reform of the Police Service has resulted in considerable disruption to established structures in the medium term and the Commission has felt the impact on its seconded police resources.

**ESTABLISHMENT AND FUNCTIONS OF THE OMD**

The sources of the role and functions of the OMD are:

- the Report of the Commission of Inquiry (the Fitzgerald Report); and

**The Fitzgerald Report**

The Fitzgerald Report sets out the role of the OMD in Section 10.2.3, pages 311 – 315. The main points are that the OMD:

- continue the investigative work of the Fitzgerald Inquiry;
- conduct independent investigations of any suspected official misconduct;
- investigate individual cases or conduct broader based inquiries into the incidence of official misconduct.

The Fitzgerald Report is of continuing, as well as of historical significance in the establishment and functioning of the OMD. It provides the rationale for the Division, including its broad structure, functions and powers and some procedures for its operation. Most of its prescriptions were subsequently included in the Act. Additionally, the Report is given continuing statutory significance, with the OMD required to:
"further the investigative work carried out on behalf of the Commission of Inquiry..."\textsuperscript{10}

and

"give effect to the guidelines for operation of the Official Misconduct Division contained in the Report of the Commission of Inquiry."\textsuperscript{11}

"Guidelines" as such are not delineated in the Fitzgerald Report. For the purposes of the Act, as quoted above, the Commission takes "guidelines" to mean the substance of the Report, in particular the matters set forth in Chapter X "Reforms in Criminal Justice" and in those recommendations defining the role, composition and powers of the OMD.

As a consequence, the Director of the OMD has felt bound to follow the "guidelines" contained in the Fitzgerald Report to the extent practicality allows, where those "guidelines" are not in conflict with the direct statutory provisions of the Act.

**The Criminal Justice Act 1989–90**

The Criminal Justice Act gives effect to most of the recommendations of Mr Fitzgerald Q.C. in relation to the establishment of the OMD and its functions and powers. Hence Section 2.20(1) prescribes the OMD as the investigative unit within the Commission. Subsection (2) lists the functions of the Division and Section 2.24 provides for reports by the Director of the Division to the Chairman and, with the Chairman's approval, to various other persons and authorities.

Division 4A provides for the establishment and functions of the Complaints Section and imposes on the Commissioner of the Police Service the duty to refer to the Complaints Section all matters that he suspects involve, or may involve, misconduct, and on the principal officers of other units of public administration, the duty to similarly report suspicion of official misconduct.

The Act does, however, depart from the Fitzgerald Report's recommendations in certain important respects. The principal departures are:

- The Report recommended that the Misconduct Tribunals be separate from the Divisions\textsuperscript{12}, however Section 2.31 of the Act provides for the constitution of Misconduct Tribunals as part of the OMD.

\textsuperscript{10} The Act, s.2.20(2)(b)

\textsuperscript{11} ibid, s.2.20(2)(g)

\textsuperscript{12} The Fitzgerald Report, Figure 10.1, p.312
The Report recommended that the OMD be able, at its discretion and with circumspection, to investigate both anonymous and "stale" complaints\(^{13}\). However, Section 2.20 gives the Division no such discretion and requires it to investigate all cases of alleged or suspected misconduct by members of the Police Service and all cases of alleged or suspected official misconduct by persons holding appointments in other units of public administration, that come to its notice from any source, including by information from an anonymous source. Similarly, Section 2.29(a) requires the Complaints Section to assess the substance of all complaints and information concerning suspected misconduct furnished to it, including that from anonymous sources.

The Report recommended that the Complaints Section "be able to give assurances of confidentiality to informants or complainants in its discretion and on guidelines to be established"\(^{14}\). The Act gives the Complaints Section no such power.

The Report recommended that the OMD be able to conduct secret investigations which may not be reported to the subjects of the investigations or any other persons.\(^{15}\) There is no provision in the Act dealing specifically with secret investigations. Furthermore, this recommendation does not sit comfortably with the requirement imposed by Section 2.24(4) on the Director to cause a response to be given to every complainant stating what action has been taken in respect of the complaint.

The Report recommended that the Division be empowered to "cause interception of or intercept telecommunications and post".\(^{16}\) No such power is acknowledged by the Act, although it is recognised that it would require complementary Federal legislation.

Various other powers which the Report recommended be conferred on the Division are not in fact conferred by the Act\(^{17}\). These include:

- The power to detain persons for specified times and purposes, and under specified conditions.
- The power to take samples or specimens from the person of anyone detained or arrested.

\(^{13}\) ibid, p.314

\(^{14}\) ibid, p.314

\(^{15}\) ibid, p.313

\(^{16}\) ibid, p.313

\(^{17}\) ibid, p.313
The power to cause arrested or detained persons to undergo examinations and tests.

The power to photograph, fingerprint, palm print, footprint or voice print or take samples of handwriting from any person detained or arrested.

Mr Fitzgerald Q.C., though recommending that the activities of the OMD be open to review by the judiciary on application, was concerned that such judicial review not be able to be used by the corrupt and misguided as a "window" on the Division's activities. Section 2.25 of the Act provides for judicial review but contains no such safeguard.

One suspects that in the main, the failure to provide the Commission with the various additional powers referred to above may well have reflected a governmental or bureaucratic unease with the extent of the powers being granted to the OMD, although other matters such as the lack of a discretion concerning the investigation of anonymous and/or stale complaints, or the failure to empower the Complaints Section to give assurances of confidentiality, or the provision of some protection against the misuse of the judicial review process by the corrupt may well indicate oversights on the part of the Parliamentary draftsman and those instructing him.

Functions and Powers

The Official Misconduct Division is authorised under the Act to operate of its own initiative, as well as in response to complaints or information received concerning misconduct.

The Division has nine (9) functions under the Act including:

- the investigation of the incidence of official misconduct generally in Queensland;
- furthering the investigative work commenced by the Fitzgerald Inquiry;
- the investigation of all cases of alleged or suspected misconduct by police officers or official misconduct by other persons holding appointments in units of public administration in Queensland;
- the provision of assistance, by way of education or liaison, to law enforcement agencies, units of public administration and others concerning the detection and prevention of official misconduct.

To appreciate the ambit the Commission's responsibilities, it is necessary to refer to the terms "official misconduct" and "unit of public administration" and their definitions.
Official Misconduct

"Official Misconduct" is defined by Section 2.2 and 2.23 of the Act. In brief, it means:

(A) Where a person holds an appointment in a unit of public administration;

(i) conduct in the exercise of his powers or authority which has been dishonest or not impartial; or

(ii) conduct which adversely affects or could adversely affect the honest or impartial exercise of his powers or authority; or

(iii) conduct which has breached the trust placed in him by reason of his employment; or

(iv) conduct which involves a misuse of information acquired by him by reason of his employment;

and in any such case, constitutes or could constitute,

(v) a criminal offence; or

(vi) a disciplinary breach that provides reasonable grounds for the termination of his employment.

(B) Where a person does not hold an appointment in a unit of public administration;

(i) conduct that adversely affects or could adversely affect the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment therein;

and in any such case, constitutes or could constitute –

(ii) a criminal offence.

The Act also provides that conduct may be official misconduct notwithstanding that –

(a) it occurred before the commencement of the Act; or

(b) the person involved in the conduct is no longer the holder of an appointment in a unit of public administration.
(b) **Unit of Public Administration**

Section 1.4(1) of the Act defines "Unit of Public Administration" as:

(a) the Legislative Assembly, and the Parliamentary Service;

(b) the Executive Council;

(c) every Department of the Public Service of Queensland within the meaning of the Public Service Management and Employment Act 1988;

(d) the Police Service;

(e) the Railway Department;

(f) every corporate entity that is constituted by an Act, or that is of a description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act;

(g) every non-corporate entity established or maintained pursuant to an Act, which is funded to any extent with moneys of the Crown, or is assisted in a financial respect by the Crown;

(h) the Courts of the State of whatever jurisdiction, and the registries and other administrative offices thereof.

(c) **An Appointment in a Unit of Public Administration**

Section 1.4(2) provides that a person holds an appointment in a unit of public administration if he holds any office, place or position therein, whether his appointment thereto is by way of election or selection.

The clear intention of the statutory provisions is to define "official misconduct" widely although limiting the Commission's function to the more serious examples of such conduct. Although the conduct may not necessarily be criminal, if it constitutes a disciplinary breach it must provide reasonable grounds for the termination of the person's services.

The exact limits of the definition of "a unit of public administration" have yet to be fully realised as the definition can have some very technical limits, for instance, the possible exclusion of the Corrective Services Commission from the ambit of the Act (referred to later in the report). However it is clear that the vast majority of persons employed directly by the public sector in Queensland, either the persons employed under the Public Service Management and Employment Act 1988, or in various statutory corporations within the State (other than Commonwealth agencies) are covered by this definition and thus brought within the scope of the Commission's operations.
Hearings

For the purpose of discharging the functions and responsibilities of the OMD, the Commission may conduct a hearing and may receive evidence orally or in writing, on oath or affirmation, or by way of statutory declaration.

Such a hearing (not to be confused with a Misconduct Tribunal hearing) must be constituted by:

- the Chairman alone, or, if the Chairman so elects, with one or more of the other Commissioners;

- the Director of the OMD;

or

- an officer of the Commission who is a legal practitioner, authorised by the Chairman for the purpose in a particular case.

In the conduct of such a hearing, the Commission may be assisted by a legal practitioner employed or retained by the Commission.

Other Investigative Tools

To perform its function of investigating official corruption in units of public administration and organised or major crime, the Commission has been given powers that are wider than normal policing powers. These powers include:

- the power to require a person to furnish to the Commission a statement of information relevant to an investigation of the Commission;

- the power to compel the production of records and things relevant to an investigation of the Commission;

- the power to summons persons to attend before the Commission and given evidence relevant to an investigation of the Commission;

as mentioned above, the power to conduct hearings, and at those hearings the witnesses may be compelled to give evidence on oath and produce documents;

- the power to compel a person, in attendance before the Commission:

  - to furnish a statement of information;

  - to give evidence;

  - to produce records and things;
notwithstanding that compliance would tend to incriminate him. (Information obtained under compulsion cannot be used against the person in civil, criminal or disciplinary proceedings).

with the leave of a Supreme Court Judge, the power to compel a person for the purpose of the discharge of the functions or responsibilities of the Commission;

. to furnish a statement of information;

. to produce records and things;

notwithstanding that compliance would be a breach of duty to maintain confidentiality imposed by Statute or obligation. (Information obtained in these circumstances does not render the person liable to a breach of the Statute or obligation or to disciplinary action).

In addition to these wider powers, the Commission, with the leave of a Supreme Court Judge, may:

. execute a search warrant;

. use a listening device.

The Prosecution of Offences

The Commission has no role in the prosecution of criminal offences investigated by the Commission and its staff beyond the laying of charges and the support of the brief of evidence. The Act, by Section 2.24, provides that every investigation carried out by the OMD shall be the subject of a report to the Chairman who may refer the report to the Director of Prosecutions or other appropriate prosecuting authority with a view to prosecution proceedings being taken. The Commission has interpreted this provision as requiring the completion of a brief of evidence prior to its referral to the Director of Prosecutions or other prosecuting agency (in most cases the Queensland Police Service). It is a matter for the prosecuting agency to determine whether the evidence is sufficient to support the laying of charges. However, from time to time operational exigencies will require the laying of charges prior to referral of the matter to the prosecuting agency, for example, in the case of continuing criminal conduct or where the defendant is about to flee the jurisdiction. In such cases the Commission is of the view that by virtue of Section 2.56(3) the seconded police members of its staff retain all powers and authorities had by them as police members and can proceed to charge where there is an operational requirement to do so.

Reports

By virtue of Section 2.24(1) of the Act, The Director of the Official Misconduct Division shall report on:
every investigation carried out by the Division;

every matter of complaint or information, submitted to him by the
Complaints Section of the Division.

Such a report is made to the Chairman with a view to such action by the
Commission as he considers desirable. If the Chairman considers it appropriate, he
may authorise a report to those agencies and bodies enumerated in Section 2.24 of
the Act.

A report made to the Director of Prosecutions or the Executive Director of the
Commission must contain, or be accompanied by, all relevant information known
to the OMD whether the information:

- supports a charge that may be brought against any person in consequence of
  the report;

or

- supports a defence that may be available to any person liable to be charged
  in consequence of the report.

STRUCTURE OF OMD

The Guiding Principle

In the light of its genesis in the work of the Fitzgerald Inquiry and in conformity with the
statutory injunction contained within Section 2.20(2)(g) of the Act, the Commission has
resisted the temptation to second-guess the scheme for the operation of the OMD as
embodied in the Fitzgerald Report (save only that it is consistent with the direct statutory
obligations set forth in the Act). The Commission has adopted as its guiding principle the
full implementation of the Fitzgerald model, except where practicality or operational
experience has required some modification.

The fact that some modification would be required in the light of experience was
recognised by Mr Fitzgerald Q.C., where in speaking of the composition of the OMD, in
particular the appropriate balance in size and establishment, he said:

"In part that will have to be the product of experience in operations."\(^{16}\)

Thus the present establishment and structure of the OMD reflects:

- what was inherited from the Fitzgerald Inquiry;

- the recommendations contained within the Fitzgerald Report; and

\(^{16}\) ibid, p.313
the product of experience gained in operating that structure over the intervening period. The decision was taken that wherever possible, this structure would be trialled for a twelve month period before any major modifications were made to it, subject only to necessary modifications to maintain the efficiency of the operation.

OMD consists of four main organisational units, namely:

(i) a Directorate, consisting of the Director of the Division and support personnel;

(ii) a Complaints Section (provided for by Division 4A of the Act) – the function of which is to receive all complaints or information concerning misconduct or official misconduct

(iii) the Multi-disciplinary Teams (a development of the investigative structure inherited from the Fitzgerald Inquiry) – the function of which is to investigate the more complex complaints and pro-active matters of a major or organised crime nature developed within the Intelligence Division, or which otherwise come to the notice of the Commission; and

(iv) a Surveillance Section, embodying a capacity for static, mobile and electronic surveillance, which section acts in aid of the investigations undertaken in the OMD by both the Complaints Section and the Multi-disciplinary Teams.

The main aspect of the work of the OMD to this time has been its establishment against the background of a continuation of the work of the Fitzgerald Inquiry. It must be recognised that the Commission is a very different organisation from its forerunner, the Fitzgerald Inquiry.

An infrastructure of procedures, systems, methods, guidelines and training had to be put in place while the Division continued to undertake 50 investigations into matters as diverse as the bribery of public officials and large scale narcotics trafficking.

The Police Establishment

The Fitzgerald Report recognised the need to second police members in order to carry out investigations in the pursuit of the Commission’s role and function.

The Chairman, in agreement with the Commissioner of the Police Service, established a police contingent of ninety-five (95) personnel in June 1990 for the Commission on the basis of the requirement as it then appeared. This police establishment comprises one Assistant Commissioner, two Superintendents (a third will be added shortly) and ninety-one other ranks.

During the course of the Fitzgerald Inquiry, promotions and transfers in QPS were stopped and only recommenced as of late 1990. The Queensland Police Service is undergoing dramatic change at this time, particularly in relation to the selection, promotion and training of police members. The police staff at the Commission are unsettled in that they
also are vying for places in the general Police Service. As a result the tenure of appointment of police staff at the Commission has not stabilised with continual transfers taking place both into and out of the Commission police component. This will continue into the foreseeable future.

With the step up in training now available to police, Commission police staff are likewise requesting consideration to attend training courses to enhance their promotional prospects and at times this cannot be facilitated due to the demanding workload at the Commission.

Additionally, during the Fitzgerald Inquiry police recreation leave was allowed to accumulate with the result that many members of the Queensland Police Service have significant recreation leave owing and in many instances, this amounts to more than three months. The Police Service itself has adopted the policy that all outstanding leave must be taken by the end of 1992. Bearing in mind that further leave will be accrued before the end of 1992 and in an endeavour to reach the QPS target, there will be a further significant drain on human resources which the Commission must address as an additional and previously unidentified problem.

The police establishment is allocated to the following areas of operational endeavour:

- Witness Protection Division;
- Surveillance Section;
- Complaints Section;
- Multi-disciplinary Teams;
- Operations Directorate.

Police staff the Witness Protection Division, the Surveillance Group and the Technical Support Unit. This comprises some 40% of the police staff. The remaining police work within the Complaints Section and the Multi-disciplinary Teams and carry out investigations under the guidance of the Team Leaders.

With the transfer of staff into and out of the Commission on promotion and otherwise, the Police Establishment has yet to reach authorised strength, although, given the large investigative workload of the OMD, strenuous efforts are being made to rectify this situation.

The Witness Protection Division is separate from the OMD and its Director is also the Assistant Commissioner in charge of the Police Establishment. The Witness Protection Division accounts for twenty-four members of the Commission Police Establishment.

The other sections containing seconded police officers all fall within the OMD. The seconded police within the OMD are subject to a matrix form of control with the Assistant Commissioner (designated within the Commission as the Director of Operations) being responsible for the discipline of police personnel, the maintenance of work performance, and professional standards and the management of the Surveillance Unit, while the
Director of the OMD operating through the Chief Officer of the Complaints Section or the leaders of the Multi-disciplinary teams is responsible for the tasking and operational supervision of police investigators. The Surveillance Section and the Technical Unit are tasked via the Director of Operations.

It is a complicated arrangement in theory but works well in practice (provided that senior personnel are appropriately professional in their approach).

The police members are specially selected for secondment to the Commission, having previously exhibited high integrity and developed investigative skills. Upon secondment, by virtue of Section 2.56 of the Act, they are relieved of any obligation to obey, provide information to, or account to any other police officer. Secondments are for a two to three year period and are non-renewable. This is in line with the recommendations of the Fitzgerald Report.¹⁹

**Surveillance Section**

The Fitzgerald Inquiry formed a Surveillance Section in January 1988 with four members under the command of a Detective Sergeant, including a police technical officer.

At the time of the issue of the Fitzgerald Report the squad had a total complement of 20, including two technical officers and had proved its value, providing considerable assistance in the investigation of major crime.

It was, no doubt, in the light of this experience that the Fitzgerald Report recommended that the OMD have a surveillance capability.²⁰

The legacy of the Fitzgerald Inquiry and the recommendation of its report are the basis of the Commission's Surveillance Squad, which currently has an allocated strength of 15 personnel. In September 1990 the two Technical Officers then attached to the squad formed the Commission Technical Unit, separate from but working closely with the Surveillance Section.

Joint operations have been conducted with the Bureau of Criminal Intelligence Qld. (BCIQ), Drug Squad, Homicide Squad, Prison External Investigation Unit, the Australian Federal Police, the National Crime Authority, NSW Drug Enforcement Agency, the New South Wales State Drugs Crime Commission, and the Australian Customs Service.

The majority of the operations utilising the services of the Surveillance Section have been major drug investigations.

Training is ongoing, mainly conducted in house, by the squad itself. It takes approximately six months to train a basic surveillance officer.

¹⁹ ibid, p.311.

²⁰ ibid, p.313
Surveillance is a very demanding task requiring patience, concentration, dedication, teamwork, commitment, initiative, and driving, photographic, video and basic technical skills.

A senior officer of the Australian Federal Police (AFP) commented after a lengthy joint Commission/AFP operation that the Commission Surveillance Section is one of the most professional surveillance sections that he has observed. Other law enforcement agency officials have made similar comments.

The Technical Unit

As described above, the Surveillance Section established by the Fitzgerald Inquiry included a technical component within its ranks.

Over time it became apparent there was a need to expand these technical services beyond the requirements of the Surveillance Section to those of the Fitzgerald Inquiry and the newly formed Commission. Accordingly, in September 1990 the Technical Unit became an autonomous unit within the Commission.

The primary goals of the Technical Unit are to provide technical support to the Commission, in particular, to participate as necessary in investigations and to promote the optimum use of technical resources.

The unit has been directly involved in nearly all operations involving the Commission's Surveillance Section and has assisted in operations to secure witnesses in the Commission's witness protection program.

An important role is the development of new applications in equipment and its use, and to this end the Unit's members have engaged in extensive training programs.

COMPLAINTS SECTION

Historical Context

Transition

The Fitzgerald Report recommended the abolition of the Police Complaints Tribunal and the Internal Investigations Section of the Queensland Police Force. The findings of the Fitzgerald Inquiry should be borne in mind when judging the performance of the Commission in addressing the police complaints function since 22 April 1990. These are recorded in particular at pages 81 and 82 and 288 to 293 of the Fitzgerald Report. They paint a grim picture of what previously occurred. It is salutary to re-state the main conclusion of the Fitzgerald Inquiry in respect to the failure of the Internal Investigations Section:

"The Internal Investigations Section has been woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralised whatever prospect there might have been that allegations against police would have been
property investigated. The Section's effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.

The Internal Investigations Section has provided warm comfort to corrupt police. It has been a friendly, sympathetic, protective and inept overseer. It must be abolished."21

Based upon its observations of the many files which it has been requested to re-investigate since the establishment of the Complaints Section, the Commission can corroborate the conclusions of the Fitzgerald Inquiry.

Reference should also be made to the failure of the Police Complaints Tribunal which similarly led the Fitzgerald Inquiry to recommend its abolition, although the Fitzgerald Inquiry recognised that the Police Complaints Tribunal had made a determined and successful effort to improve its image under the last Chairman, His Honour Judge McGuire. This very substantial improvement in performance at once provided great comfort to the Commission and suggested a means of overcoming many of the inefficiencies of the past.

From early 1990 discussions took place between the Commission and both pre-cursor organisations with a view to the take-over of their functions on 22 April, 1990. The Internal Investigations Section investigated 1,045 complaints in 1989. However, an estimated 60% of those matters were investigated on behalf of the Internal Investigations Section by officers in regional areas. The Police Complaints Tribunal dealt with 791 matters in 1989, although many of those matters were dispatched in a very peremptory fashion. This is not a criticism but rather an acknowledgment that His Honour Judge McGuire and the other members of the Police Complaints Tribunal did their utmost to "clear the decks" of matters, many of which were several years old, prior to the handing over of the function to the Commission, so that the Commission would not be weighed down by the baggage of past years. As mentioned, they were successful in respect of all but 66 matters, although some of these matters were voluminous, very historical and required the commitment of considerable resources by the Commission early in the life of the Complaints Section to the detriment of the investigation of other matters.

Role and Functions

Section 2.27 of the Act provides for the establishment of the Complaints Section and requires that all complaints or information concerning misconduct brought to the notice of the Commission be furnished to the Complaints Section.

Section 2.28 provides for the referral of complaints or information concerning misconduct to the Complaints Section. It is significant that the Commissioner of the Police Service is required to refer to the Complaints Section all complaints of, or matters involving, suspected misconduct by members of the Police Service, whether such complaints and matters arise within or from outside the Police Service whereas principal officers of other units of public administration are only required to refer to the Complaints Section matters they suspect involve or may involve official misconduct.

21 Ibid, p.289
Section 2.28(5) empowers the Commission to issue guidelines to regulate or modify the duties imposed on the Commissioner of the Police Service and on other principal officers to report instances of misconduct and official misconduct respectively. Section 2.28(6) requires principal officers to comply with the directions in writing of the Chairman, or his delegate, relating to cases of suspected misconduct. This power to issue directions extends to directing the transference to the Commissioner of responsibility for investigation of any complaint. Guidelines and directions were issued to the Commissioner of the Police Service by the Commission. Those currently in force (dated 20 July 1990 and 5 October 1990 are annexed (Annexures 1A and 1B).

Pursuant to these guidelines and directions, the Commissioner of the Police Service investigates on behalf of the Commission complaints of misconduct of a minor nature against members of the Police Service. Examples of such cases are complaints of incivility and minor complaints of harassment. Furthermore, the Commissioner of the Police Service is required to investigate more serious matters:

- if required to do so by the Commission (for example, where the alleged misconduct occurred in a remote part of the State and the Commission is unable to deploy investigators to deal with the matter); or
- if immediate investigation is necessary in order to preserve evidence or obtain evidence which the Commission would not otherwise be able to obtain or would not readily be able to obtain (for example, where a complainant alleges assault a medical examination needs to be organised and photographs need to be taken).

Section 2.29 of the Act provides that it is the function of the Complaints Section:

(a) to assess the substance of all complaints and information concerning suspected misconduct furnished to it, including from anonymous sources, and of all matters involving suspected misconduct referred to it;

(b) to summarily reject such complaints and information as appear to the chief officer of the Section to have been furnished frivolously or vexatiously;

(c) to submit to the Director of the OMD all complaints, information, and matters not dealt with under paragraph (b), accompanied by observations of the chief officer of the Section:

(i) as to whether the complaint or information involves, or may involve, official misconduct; and

(ii) as to what further action (if any) is necessary or desirable, if action is to be taken by the Commission in respect thereof.

The performance of these functions by the Complaints Section and the Chief Officer is subject to any guidelines issued by the Commission. The Commission, in fact, issued guidelines to the Chief Officer on 5 October 1990. Among other things, these guidelines give effect to Mr Fitzgerald's Q.C. recommendation that the Complaints Section have the discretion to "refer trivial or purely disciplinary matters to chief executives of Departments
or the Commissioner of the Police Service to investigate and take appropriate action".\textsuperscript{22} The guidelines also provide that matters assessed by the Chief Officer need not be referred to the Director for his consideration unless a prima facie case of criminal conduct or official misconduct exists.

Establishment

Assessment versus Assessment and Investigation

In establishing the Complaints Section, the first dilemma faced by the Commission was whether to operate the Complaints Section purely as an assessment centre, that is, a clearing house for the receipt, assessment and referral of complaints, much along the lines as is done by the Independent Commission Against Corruption in New South Wales, and the majority of other civilian oversight of internal police investigations bodies, in Australia and overseas (the IACOLE model\textsuperscript{23}) or to undertake both assessment and investigation within the Complaints Section. As mentioned above, the Commission was substantially influenced in this decision by the apparent success of the Police Complaints Tribunal under the chairmanship of His Honour Judge McGuire during the last twelve months of its operation, a success which Judge McGuire had attributed to:

- the transfer of investigators to the Tribunal;
- the assessment of complaints in the light of immediate preliminary inquiries by Tribunal investigators;
- a selective approach to the extent of investigation of particular complaints (that is, all complaints were not investigated equally – indeed His Honour conceded that some received peremptory treatment while others were investigated in full);
- the conservative use of the hearing power (only four matters were dealt with by way of hearing in the last twelve months of the PCT), on the basis that the conduct of hearings had the tendency to bog matters down in legal formalities and the protracted examination of witnesses.

Further, the IACOLE model, on the basis of research undertaken by the Commission, did not appear successful in instilling public confidence in the process of investigation. The Commission came to the view, as it stated in its First Annual Report:

"The Commission is of the view that some investigation (although somewhat pre-emptory at times) is far preferable to no investigation. It is better to deal at some level with all complaints (even if only by interviewing the complainant and assessing material provided by him) than to deal with only a minor proportion,

\textsuperscript{22} ibid. p.315

\textsuperscript{23} International Association for Civilian Oversight of Law Enforcement
justifying such selectiveness on the basis of "a lack of resources" or "a burgeoning backlog".\textsuperscript{24}

The Act does not extend to the OMD or the Complaints Section the luxury afforded to the Independent Commission Against Corruption (ICAC) by the legislation under which that organisation is established. The New South Wales organisation can pick and choose which matters it will investigate. Indeed, in a recent report\textsuperscript{25} the ICAC said:

"The Independent Commission Against Corruption was two years old on March 13 1991. Since then the Commission has received around 2,500 complaints or reports of suspected corrupt conduct. It has initiated over 30 formal investigations, some of which are not yet complete."

On the other hand, the OMD and the Complaints Section is required to investigate all complaints other than those dismissed by the Chief Officer as having been made frivolously or vexatiously. However, investigation within the meaning of the Act, namely Section 1.4 is defined thus:

"investigate' includes examine and consider".

On 22 April 1990 the Complaints Section not only took over new complaints made concerning members of the Police Service but as mentioned above, inherited from the Police Complaints Tribunal 66 matters, many of which were of a complicated nature and of several years standing. The Section also commenced to discharge the function of assessing complaints concerning public officials. The Commission experienced an initial rush to lodge complaints either through dissatisfaction with the processes or results of the former bodies or because of the publicity which attended the Commission's take-over of this function.

\textbf{Initial Workload}

As mentioned above, on 22 April 1990, 66 complaints made to the Police Complaints Tribunal were transferred to the Complaints Section of which 14 matters had not been investigated at all. The remainder were at varying stages of investigation. Many of the matters were of a substantial nature having been the subject of investigation for a number of years.

From 22 April 1990 complaints immediately began to flow in at the rate of approximately 45 per week, although in recent weeks, for reasons which the Commission has not yet been able to fathom, that rate has increased to an average of 50 matters per week. It is possible that it reflects a growing community awareness and acceptance of the role and credibility of the Commission in discharging its function, although it is conceded that there may be other reasons. Approximately three quarters of complaints relate to the conduct of police officers.

\textsuperscript{24} Annual Report 1989-90, Criminal Justice Commission, p.20

\textsuperscript{25} Report of the ICAC entitled "The First Two Years - 19 Key Issues" March 1991
The second largest category of complaints was soon identified as that related to the activities of local authorities. The investigation of these complaints has proved to be involved and protracted.

There is a growing number of complaints being lodged by principal officers of units of public administration, although this is a fairly recent phenomenon. In the Commission's view this does not indicate any default on the part of principal officers but reflects the usual delays which occur upon the introduction of a new system. Several weeks prior to the operational date of 22 April 1990 the Chairman wrote to all Ministers requesting their assistance in notifying officers in their respective portfolios of the obligation under the Act to bring instances of suspected official misconduct to the attention of the Commission. They were also provided with a standard form of report of official misconduct.

Similar arrangements were made with the Commissioner of the Police Service. A form headed Complaint made against Member of Police Service was circulated throughout police establishments in Queensland together with an instruction under the hand of the Commissioner concerning a police officer's obligation to report to the Commissioner and to the Complaints Section any case in which he knows or reasonably suspects another officer to have engaged in misconduct.

**Staffing Difficulties**

During the initial months delays were experienced in the staffing of the Complaints Section for two reasons:

- delay in the approval of the Commission's budget thereby preventing the engagement of staff;

- a decision by the Commissioner of the Police Service that it was not appropriate for the Commission to continue with past arrangements to directly select the required police officers from among serving officers.

The Commissioner was of the view that as the Commission is a permanent body, police officers should be recruited to the Commission by way of the normal processes of selection for promotion. The Commission agreed with this view on the understanding that the selection process would be completed within a matter of weeks. In fact, the filling of the 15 Inspector's positions within the Complaints Section became part of the standard promotions selection process of the Police Service and was not completed until mid August 1990, some four months later. This resulted in the accumulation of a substantial backlog by September 1990 of over 628 complaints.

To provide for at least some investigative support to the Section in the initial months, the Commissioner of the Police Service agreed to the temporary secondment of 6 officers of the rank of Inspector.

The Commission also made internal arrangements for the temporary transfer of staff from the Multi-disciplinary Teams, both lawyers and police, to the Complaints Section.
Further, during the initial six months, the Chief Officer of the Complaints Section and other officers within the Section were unable to give their undivided attention to the assessment and investigation of complaints as they were also engaged in setting up procedures, drafting guidelines and organising work flows with the assistance and supervision of the Director of the Division and members of the Commission.

**Complaints Section Investigative Complement**

The investigative complement of the Complaints Section was originally set at the total number of officers attached to the Police Complaints Tribunal and the Internal Investigations Section. This figure was reached after negotiations by the Commission with the Commissioner of the Police Service. It was clearly understood by both the Commission and the Commissioner that this complement was the starting point only.

The decision to commence with only 15 Inspectors for the Complaints Section was taken having regard to the well-being of the Police Service (so as not to strip it of too many experienced commissioned officers at a critical time in the police reform process) and the budgetary constraints of the Commission. It was however, not envisaged as a permanent staffing level but as an appropriate starting point. Additional staffing would depend upon the experience gained in the operation of the Complaints Section. This is an important point and it is useful to refer to the actual words of the arrangement set forth in the Chairman's letter to the Commissioner of the Police Service dated 15 March 1990:

"Finally, the Commission would reserve the right based upon its experience in the operation of the Complaints Section to request the transfer of further positions from the Police Force should it become clear that such a step is warranted by the workload. In this regard the Commission is mindful that 60% of the 800-900 complaints received annually by the Internal Investigations Section are referred to Regional Commanders for investigation, some 15% of which are appropriately classified as serious matters."

Unlike the requirement on similar agencies interstate, the Act requires the Commission to investigate all cases of misconduct of police officers and all cases of official misconduct of other public officials. This in itself represents a far higher workload than that of the Police Complaints Tribunal and Internal Investigations Section combined. Furthermore, in respect of the Internal Investigations Section, only misconduct of a serious nature was retained by that Section for investigation. In fact, 60 percent of matters initially referred to that Section were forwarded to the Regions for investigation. The OMD is afforded no such luxury. Whilst some matters of a minor nature are referred to the Commissioner of the Police Service for investigation on behalf of the Commission only 245 such cases of the 1,911 complaints received by the Commission have been so referred. This represents 12.8 percent.

The effect of the above has been to place unrealistic demands upon the Complaints Section and the OMD. During July and August 1990 it was considered necessary to deploy further legal and investigative personnel of the OMD in the investigation and assessment of complaints matters. This significantly depleted resources available for the investigation of pro-active matters within the Division.
Another factor contributing to the pressure upon the Complaints Section has been the demands for expeditious finalisation of complaints. The Commission accepts that in some instances there have been understandable but undesirable delays in finalising complaints. This has particular significance in view of the provisions of the Police Service (Administration) Regulations which require appointments and promotions to be made in accordance with integrity principles. The Commissioner cannot consider for promotion an officer whose conduct is the subject of an unfinalised complaint within the Commission if the Chairman has advised the Commissioner that the allegation has credibility, a proper basis for belief and is sufficiently serious (if substantiated) to debar the officer from promotion. That the Complaints Section and the OMD have finalised complaints at a creditable rate is shown by the statistical information (in fact at several times the rate per investigator of similar organisations).

It is also relevant to compare the rate at which the Commission has finalised complaints with the rate at which the Police Service has finalised complaints of minor misconduct referred to it by the Commission. Of the 1,911 complaints received by the Commission, it has finalised 1,092 (that is, 57 percent). During that period to 31 March 1991 the Complaints Section assessed 245 matters as involving misconduct of a minor nature and as being appropriate for referral to the Commissioner of the Police Service for investigation and any disciplinary action considered appropriate. Of those matters only 76 have been finalised (that is, 31 percent). As mentioned previously the referral of a matter for investigation to the Commissioner of the Police Service is not the end of the Commission’s involvement in that matter. Upon finalisation of the investigation, the report is referred to the Complaints Section for further assessment. This assessment may result in further investigation, either by the Commission’s investigators or by the officers of the Police Service. Following the final assessment of such matters, the Commission corresponds with the complainant in order to comply with Section 2.24(4) of the Act.

As stated above, the complement of police officers engaged in the investment of complaints was initially fixed at 14 Inspectors and 1 Superintendent. The demands placed on the Section have resulted in that complement being increased to 17 officers. It is further intended in the near future that a further 5 officers will be deployed from elsewhere within the Commission in the investigation of complaints matters. Obviously this strain on investigative resources reduces the operations of the Commission elsewhere. The problem has been further aggravated by the significant reduction in the budget of the Commission, from $20 million to $17 million.

Inter-Jurisdictional Comparison of Personnel Allocated to the Investigation of Complaints

New South Wales Police Internal Affairs Section:

1989 – 1990 – Received a total of 2,414 complaints of which 475 were sent to Internal Affairs and 340 sent to officers on patrol. 1,599 were resolved without investigation, e.g. not investigated or resolved by conciliation.

Staff Levels 1989 – 1990

70 police and 17 support staff.
Australian Federal Police (Internal Investigation Branch)

1989 - 1990 - Received a total of 582 complaints, which were classified into:

- 487 complaints - relating to "on duty" officers
- 95 allegations - relating to "off duty" officers and internally raised complaints.

**Staff Levels 1989 - 1990** - 24 police and 4 support staff.

An unspecified number of complaints are referred to the various Regional Commanders for investigation and report.

Victoria Police Internal Investigations Department

1989 - 1990 - Received 1052 matters classified as complaints, 613 of which were further classified as serious and 439 of which were further classified as minor.

**Staff Levels 1989 - 1990** - 56 gazetted police staff with 15 support staff. Vicpol also employ "special task force" staff when required for larger investigations, which brings total police staffing to approximately 60 from time to time.

Complaints Section, Criminal Justice Commission, Queensland

*2000 complaints received from 22 April 1990 to date

**Staffing**

**Complaints Section**

- 17 Inspectors of Police
- Other staff: ** 6 lawyers
  1 financial investigator
  4 Complaints Officers
  6 support staff

**Multi-disciplinary Teams**

An estimated one third of the capacity of the Teams has been expended on the investigation of the more complex complaints referred from the Complaints Section in recent months. This represents in terms of staffing:

- 11 investigators
  ** 2 lawyers
  1 financial investigator
  3 support staff
NOTES

* Approximately 25% of complaints emanate from the public sector (other than the Police Service). As a rule they represent more involved investigations, and are therefore more expensive of personnel and resources.

** The main function of the lawyers in the Complaints area is the supervision and review of complaint investigations. In other jurisdictions the review of complaint investigation is undertaken by an external body. The lawyers therefore do not represent a field investigative capacity.

The two Figures following display the number of complaints received by the Commission and by New South Wales, Victoria and the AFP during a one year period. The difference between the two Figures related only to the Commission data. Figure 2 shows the number of complaints received per police investigator in all four jurisdictions. Figure 3 presents the number of complaints received per police investigator in New South Wales, Victoria and the AFP but for Queensland it is the number received per investigating officer which includes police and financial investigators and complaints officers.

No matter how one examines the data, the Commission workload is far greater than any other jurisdiction. The Commission workload is more than 16 times that of New South Wales and over six times that of the AFP.

**FIGURE 2.**

**FIGURE 3.**

(Police Investigators only) (Qld. all Investigators)
Addressing the Backlog

As mentioned above, the Complaints Section, after five months of operation, had over 628 matters on hand requiring assessment. It should be noted that assessment may in some instances be possible without investigation, but in most cases investigation is required to varying degrees.

Principal factors contributing to this backlog of complaints were:

- The Division's inheritance of the outstanding Police Complaints Tribunal matters. As previously mentioned, these matters were not simply the most recent ones referred to that Tribunal but included many complex, lengthy and stale matters. Some of the incidents giving rise to these complaints occurred as long ago as 1985–86.

- The Complaint Sections operation for a period of four months with little more than a skeleton staff. This resulted from the fact that the provisions of the Act establishing the Complaints Section were proclaimed to commence on 22 April 1990 at which time the Complaints Section was not fully operational. In particular, the appointment of police officers took longer than anticipated as a result of the implementation of a new promotions system within the Police Service.

- From the time the Complaints Section commenced operations, complaints were received at the rate of at least 45 per week.

- Upon the commencement of the Complaints Section, a number of complaints previously received by the Commission were transferred to that Section.

The complaints received of official misconduct against members of the wider public sector to this date have proven to be a substantial additional workload representing 25% of all complaints received.

The Commission has been taking action to reduce the backlog to manageable proportions. It recognises that its goal of instilling public and police confidence can only be achieved by fair and speedy investigation and disposition of complaints. It is also acutely aware that one of the criticisms of the Fitzgerald Inquiry of the failure of the Internal Investigations Section was that it was "hampered by a lack of staff and resources". 26

However since that time, the Commission has surrendered $3 million from its overall budget and cannot within current budgetary limits afford to request additional police staffing.

To further expedite the investigation and disposition of complaints the Director and the Chief Officer have restructured the Complaints Section. New staff employed originally for other areas of the OMD have been redeployed within the Complaints Section. This staff includes some legal officers. The restructuring has involved the creation of four investigative teams, each comprising a lawyer, a complaints officer (whose function is

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26 The Fitzgerald Report, p.289
principally to debrief complainants upon the making of the complaint, and after investigation) and four seconded police investigators of the rank of Inspector. A decision has been taken to increase the number of teams to five in the next few weeks. The Complaints Section also has the dedicated services of a senior Financial Analyst.

The creation of these teams has provided a more effective system for dealing with complaints as well as fostering the working relationship between the disciplines within the Complaints Section.

It is clear that in future the Commission will need to make some hard decisions in respect of investigation of complaints. As mentioned previously, it has already been necessary to gradually raise the threshold in respect of those matters categorised as involving allegations of misconduct of a minor nature, which matters are referred to the Commissioner of the Police Service for investigation on behalf of the Commission. These statistics indicate that such matters are not being dealt with as expeditiously as those investigated by the Complaints Section and elsewhere within the OMD. This is a problem which needs to be addressed by the Commission in consultation with the Commissioner of the Police Service. It is clear that unless the Commission's resources are substantially increased, which seems most unlikely, the Commission will of necessity become more selective in assessing those matters which warrant investigation whether within the Commission or by the Commissioner of the Police Service on behalf of the Commission.

Advantages of Team Structure

The high volume of complaints and the number of personnel required to deal with them resulted in the organisation of the Section into a team structure to provide for the proper management of the work flow. Within this structure exist four teams each consisting of a lawyer, four Inspectors of Police and a Complaints Officer. Complaints Officers are civilians who act essentially as interviewing officers. They take the initial complaints, are responsible for the progress of complaints through the various stages and, upon final assessment, are responsible for debriefing complainants.

This structure facilitates access by investigators to legal advice at any stage of the investigations and further provides for legal review upon completion of investigations.

The juxtaposition of lawyers and police in the investigation of complaints has proved extremely important. As reported by the Fitzgerald Inquiry, there has been a cultural reluctance on the part of many police officers and the Police Service generally to investigate complaints of police misconduct. The Fitzgerald Report found that the operations of the Internal Affairs Section were grossly biased in favour of police officers:

"Some of the procedures adopted have been amazing; for example, disclosing the material available to suspected police officers prior to interrogation and seeking and acting on reports from sections which are the subject of complaint or allegation. Regularly, no more has been required as a basis for a finding in favour of a police officer than his denial of the case against him, which was seen to put one word against another and therefore make the allegation unsustainable, a proposition so absurd as to be risible. On other occasions, nothing was done because of a claimed perception that
the witnesses against the police officer would not be considered sufficiently reliable.\textsuperscript{27}

Many of the police officers when first seconded to the Complaints Section exhibited evidence of the attitudes reported upon by the Fitzgerald Inquiry. It has been necessary to bring about a cultural re-alignment over the intervening months which by and large has been successful. Where these attitudes are so deeply entrenched as to not be capable of change, then officers have been transferred out of the section. The Commission is happy to report that this has been a rare occurrence.

It has been a useful discipline to have lawyers work with police, both as members of the investigative teams and by way of ultimate review of investigations by the Chief Officer of the Complaints Section or his deputy and, in respect of official misconduct, by the Director of the OMD and the Chairman of the Commission.

It must be recognised as a fact of life that the requirement that police officers investigate other police officers carries with it considerable pressures both actual and psychological on the investigator. The police culture which was reported upon extensively by Mr. Fitzgerald Q.C. and which deprecates any such endeavour is very real. The police officers within the Complaints Section are subject to great stress and in many instances are treated as pariahs by their fellow police members in the wider police community. Ultimately it is a matter which only time and fair dealing will rectify, or at least reduce to an acceptable balance.

One peculiarity of Complaints Section investigations is that they are undertaken by very senior police officers of commissioned rank. Although this is not required in all cases and persons of lesser rank and experience could effectively undertake many complaint investigations, this situation in part results from the Commission inheriting the investigative positions formerly allocated to the Internal Investigations Section and the Police Complaints Tribunal which were of commissioned rank status. There remain however good reasons for the retention of a large number of commissioned officers in the Complaints Section, in particular the facts that some three quarters of all complaints are complaints against police officers as opposed to employees of the wider public sector and that, police officers can be required under the provisions of the Code of Conduct (5.7) to answer questions of a disciplinary nature as opposed to questions which may tend to incriminate.

Furthermore, the Fitzgerald Report recommended that the investigation of misconduct by members of the Police Force should be carried out by commissioned officers.

**Complaints Processing**

**Initial Assessment**

Matters received by the Complaints Section receive initial assessment by the Chief Officer. Options available upon initial assessment include the following:

\textsuperscript{27} ibid, p.81
The complaint is frivolous or vexatious and should be summarily rejected. Section 2.29(b) empowers the Chief Officer to reject complaints on this basis. A complaint may be rejected on this basis if inherently implausible or if it appears to have been made by a person suffering from mental illness, it is a repetition of previously unsubstantiated allegations or it appears to have been motivated by vindictiveness or mischievousness.

A complaint may be referred to the Commissioner of the Police Service for investigation in accordance with guidelines and directions issued by the Commission to the Commissioner of the Police Service on 18 May 1990. These guidelines are discussed above. Matters referred pursuant to the guidelines include alleged breaches of discipline (such as neglect of duty) and matters involving allegations of misconduct of a minor nature generally classifiable as matters not warranting dismissal (for example, incivility and minor instances of harassment). It should be noted that as the number of active complaints within the Section increases it will be necessary to raise the level of those matters assessed as involving minor misconduct and hence referred to the Commissioner for investigation.

If the initial assessment is that the matter involves official misconduct as defined in Sections 2.22 and 2.23 of the Act, the OMD is primarily responsible for investigating the matter pursuant to Section 2.20(2)(e).

Where a complaint relates to alleged misconduct of an officer holding an appointment in a unit of public administration other than the Police Service, the matter may be referred to the principal officer of the relevant unit of public administration to investigate whether internal disciplinary action should be taken. Such matters may include matters involving a prima facie case of official misconduct as Misconduct Tribunals presently have original jurisdiction to hear disciplinary charges of official misconduct only in relation to the Police Service. All such cases are referred by the Chief Officer to the Director for his consideration and the Director in turn is required by Section 2.24 to report to the Chairman in respect of these matters. There has been no case to date of a sufficiently grave nature to warrant the Commission's seeking to have the unit of public administration or the position concerned declared by Order in Council for the purpose of conferring original jurisdiction on Misconduct Tribunals (although this can be done retrospectively). It is intended that such prescriptions be sought on a case by case basis.

Application of Section 2.15 of the Act which lists the responsibilities of the Commission and generally requires the Commission to investigate organised or major crime but only where, in the Commission's opinion, such investigations cannot be effectively discharged by the Police Service or some other agency of the State.

An assessment that the matter is not within the jurisdiction of the Commission can be made on various bases.

An initial assessment may be that although the conduct complained of is of a grave nature (even of a criminal nature) it does not involve official misconduct or the misconduct of any police officer. In such cases the matter is then referred to the appropriate agency.
Even where the conduct complained of relates in some way to the performance of duties or the exercise of powers within a unit of public administration, an assessment needs to be made as to whether or not that conduct amounts to official misconduct. Official misconduct is defined in Sections 2.22 and 2.23. Conduct, though clearly misconduct, will only amount to official misconduct if it constitutes or could constitute a disciplinary breach that provides reasonable grounds for termination of a person’s services in a unit of public administration or a criminal offence.

In determining whether official misconduct is involved, an assessment must be made in each case as to whether or not the organisation concerned is a unit of public administration. The term is defined in Section 1.4 of the Act but difficulties have been experienced in the application of paragraphs (f) and (g) of that definition. Those paragraphs define as units of public administration:

- every corporate entity that is constituted by an Act, or that is of a description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act;
- every non-corporate entity established or maintained pursuant to an Act, which is funded to any extent with monies of the Crown, or is assisted in a financial respect by the Crown.

The application of these paragraphs has led to some interesting results. For example, it would appear that one of the principal components of our criminal justice system, the Corrective Services Commission, is not a unit of public administration. On the other hand, it appears that the Rockhampton Girls’ Grammar School is a unit of public administration and thus within the jurisdiction of the Commission. Certain local Turf Clubs and Jockey Clubs are units of public administration but one of the parent bodies, the Queensland Turf Club, appears not to be a unit of public administration. Other Acts such as the Electoral and Administrative Review Act and the Public Sector Management Commission Act use a similar definition. These bodies and other Government agencies have also experienced difficulties in applying the definition. A working party has been established to consider the matter and the Commission is represented on that working party.

Some complaints involve allegations of police officers falsely attributing confessional statements to persons found guilty of criminal offences. Mr Fitzgerald Q.C. recommended that:

"Although the community may have to accept that some past injustices will go uncorrected, special consideration should be given for a review of the convictions of any who have previously raised allegations of ‘verbulling’ with this Commission or with the Government, who are still in prison and who do not have current appeals.”

\(^{28}\) ibid, p.332
The Attorney-General is presently considering conferring this jurisdiction on a unit to be established within his Department to be known as the Remediation of Miscarriage of Justice Unit. Some complaints made to this Commission have already been referred to the Department of the Attorney-General for consideration by this unit when established.

The courts of the State of whatever jurisdiction, and the registries and other administrative offices are units of public administration within the meaning of the Act. Where an initial assessment of a complaint reveals that the conduct complained of is that of a judge of, or other person holding judicial office in, a court of the State, the authority of the OMD to conduct an investigation into that conduct:

(a) is limited to investigating misconduct such as, if established, would warrant removal from office;

(b) shall be exercised by the Commission constituted by the Chairman;

(c) shall be exercised in accordance with appropriate conditions and procedures settled in continuing consultations between the Chairman and the Chief Justice of the State.\textsuperscript{29}

These special considerations were considered necessary in order to preserve the independence of the judiciary.

In many cases initial assessment may also involve an assessment as to whether or not investigation is warranted. As mentioned earlier, although Mr Fitzgerald Q.C. recommended that the OMD be able, at its discretion and with circumspection, to investigate both anonymous and "stale" complaints, the Act confers no such discretion. However, the finite resources of the Commission demand that more stringent tests be applied when determining whether anonymous and stale complaints should be investigated. In both cases the Commission looks for some corroborative evidence, whether existing or obtainable by the expenditure of an amount of resources justifiable in the circumstances. An assessment that a complaint is stale depends upon the circumstances. For example, a complaint of an assault of a minor nature may be assessed as stale if not brought to the attention of the Commission within the first few days of its alleged commission particularly where there is no supporting medical evidence. On the other hand a complaint involving the substantial misappropriation of official funds may be assessed as warranting investigation although it occurred some years ago.

When assessing whether or not a complaint warrants investigation the Commission is proposing to increasingly have regard to a number of criteria including the following:

- The seriousness of the conduct complained of.
- Would the conduct, if substantiated, constitute an indictable offence and do other aggravating circumstances exist.

\textsuperscript{29} The Act, s.2.20(3)
Does the public have some substantial interest in having the conduct complained of properly investigated. In investigations such as the inquiries into the Rochedale dump and allegations of prostitution and drug trafficking in prisons, the public had a real interest in having the matters investigated by an independent agency.

The prevalence of the conduct complained of; though an individual instance of conduct of a particular type may not be sufficiently serious to warrant expenditure of the Commission’s resources in investigation, information to the effect that such conduct is widespread and cumulatively is of a serious nature will demand investigation because of the salutary effect of the investigation on those involved in the conduct who are not actually under investigation.

Whether the conduct involves a group of persons acting in concert; evidence that misconduct is of an organised nature clearly renders the situation more serious.

Whether the person whose conduct is the subject of the complaint has been the subject of a number of similar complaints. Police personnel files include many instances where officers have been the subject of a significant number of complaints of a similar nature. Each such case appears to have been treated totally in isolation. The Complaints Section computer will allow the Commission to target such alleged persistent behaviour.

Whether the conduct complained of is of a continuing nature, the effect of which can be limited by expeditious investigation.

The likelihood of the Commission being able to conduct a successful investigation. It will be noted from the Complaints Section statistics that this criterion has not been applied as rigidly as will be necessary in the future. This matter will be addressed later in this submission.

Whether another agency is already investigating the conduct complained of. Obviously the Commission has no desire to duplicate investigations and if satisfied that such other agency can properly investigate the matter the Commission will take no further action. Similarly, the Commission may be aware that some other agency is quite capable of investigating the conduct complained of. Where no cogent reason exists for this Commission to investigate the conduct such matters will be referred to the relevant agency.

Complaints Section Investigations

There are certain peculiarities about investigations undertaken by the Complaints Section which should be noted in any appraisal of the work of the Complaints Section.

The Intensity of the Work

At the date of compiling this report, some 2,011 complaints had been received on the anniversary of the creation of the Complaints Section with the coming into force of the full provisions of the Act on 22 April 1990. This represents more than twice the number of complaints received by the Internal Investigations Section of the Queensland Police
Service during the last twelve months of its operation. Further, whereas 60% of the work of the Internal Investigations Section was referred to the police regions for investigation, less than 12% of complaints received against police have been referred back to the Commissioner of the Police Service for investigation to this time. Therefore in terms of sheer numbers, let alone the increasing complexity of the investigations, the investigators attached to the Complaints Section have had to deal with three to four times the volume of complaints per investigator than their colleagues in the former Internal Investigations Section.

In addition, as reported upon by the Fitzgerald Inquiry, the length of time taken to investigate complaints under the previous regime was a matter notorious, and even to this time many complaints remain with the Queensland Police Service pre-dating 22 April 1990, some of which are several years old. Indeed, the North Brisbane Region currently has something in the order of 216 complaints awaiting investigation, of which 50 pre-date 22 April 1990.

Factors affecting priority of investigations

In addition to the sheer volume of complaints, there are several other factors which intervene to increase the intensity of the work in the Complaints Section, in particular the pressure to finalise matters which for one reason or another have a priority status.

Fresh Assaults

There is unfortunately a high incidence of alleged police assaults on civilian defendants; some, on the basis of the medical evidence, would appear to have been quite severe. The investigation of police assaults is notoriously difficult as the civilians involved are normally very vulnerable persons of low forensic credibility and usually alone or in the company of like individuals. Almost invariably the police club, as the police culture has been described by Mr Fitzgerald Q.C. demands that police officers stick by their mates and provide the same story when questioned by investigating officers. Against this background stale complaints, that is complaints more than a few days old or, in the case of severe injuries a few weeks old, are very difficult to investigate successfully. The only good chance of successful investigation is to attend the scene of the alleged assault within hours, or at the very least a day or two, obtain an independent medical examination of the alleged victim and immediately search for corroboration of the victim’s story through the observations of independent witnesses or some other independent means. With such an immediate and vigorous response there is some prospect of successful investigation; without it there is very little chance.

The Commission has sufficient medical and other evidence before it to conclude to its satisfaction that resort to police violence is a problem within Queensland, although it is acutely aware that successful investigation and prosecution is likely to prove very difficult.

The Commission is fortified in its resolve to vigorously pursue such allegations by overseas experience, in particular that of the Public Complaints Commissioner in Ontario, Canada where over a period of a decade allegations of assaults by
members of the Toronto Metropolitan Police Force on civilians in that city dropped dramatically, both in numbers and in severity, at least partially due to the endeavours of the Public Complaints Commissioner. Even where complaints of assault were not amenable to successful investigation, the mere fact that errant police were subjected to vigorous questioning and a requirement to account for their actions within hours of the allegation having been made, brought home to them that they had no right to inflict extra-judicial punishment and to stand in the place of judge, jury and jailer.

Police Promotion or Resignation

Pursuant to the integrity vetting provisions of the Police Service (Administration) Regulations, a police officer might not be promoted while he is the subject of an outstanding complaint of misconduct. These provisions, although very necessary in the Commission's view to guard against the malpractice of the past, also have the capacity to work a grave injustice to the police officers concerned. Police officers' future advancement is effectively stultified while the complaint remains outstanding, even though that complaint may be without foundation.

Further, when a police officer resigns it has become the practice of the Commissioner of the Police Service to seek a clearance to that resignation from the Commission. The Commission is reluctant to give such a clearance if that officer is currently the subject of investigation which might lead to a criminal charge or a charge of official misconduct before a Misconduct Tribunal. Once an officer resigns, and his resignation is accepted, the Misconduct Tribunals are (effectively) robbed of jurisdiction as the maximum penalty the Tribunals can inflict is one of dismissal. If a police officer is dismissed by a Misconduct Tribunal, he may be liable to the additional penalty of the forfeiture of his rights to a superannuation payout of the government's contributions which, for a long serving police officer can be quite considerable. There is therefore considerable pressure on the Commission to finalise the investigation of such complaints as soon as possible.

Pending Criminal Proceedings

The resolution of complaints of official misconduct or misconduct may be relevant to the issues in pending criminal proceedings, and the courts from time to time adjourn matters under investigation by the Commission pending the results of those investigations. When this occurs, the Commission is placed under considerable pressure to complete the investigation and provide the result to the complainant and other interested parties prior to the adjourned hearing date.

Matters of Interest to the Parliamentary Criminal Justice Committee

From time to time persons with an interest in the resolution of a complaint make representations to the Parliamentary Criminal Justice Committee or to a Minister of the Crown, most frequently the Minister for Police and Emergency Services, the Attorney-General, the Premier or the Minister for Justice, which representations lead to a request to the Commission for information or the results of an investigation. Within its competing priorities, the Commission attempts to satisfy
such queries as soon as it reasonably can, which places further pressure on the staff
and resources of the Complaints Section.

Matters of Public Interest/Media Interest

Although matters of public interest and media interest are dealt with together under
this heading, they in fact are not necessarily coterminous. Within the limits of its
resources the Commission attempts to deal on a priority basis with matters of
substantial public interest, such as the Jury Tampering investigation, or the matter
of the Rochedale Dump. However, there are matters of particular media interest,
such as the hobby horses of investigative journalists which place additional
pressure on the staff of the Complaints Section although the Commission tries, as
far as possible, not to allow such campaigns to distort its other priorities.

Obsessive Interest of Some Complainants

Complaints are made by complainants who for one reason or another, are obsessed
with the validity and importance of their particular matter and convinced of the
righteousness of their cause beyond all reasonable argument. Although they
represent a small percentage of all complainants, they have a disproportionate and
quite damaging effect on the work of the Complaints Section. Despite
dispassionate and appropriate investigation they are unlikely ever to be satisfied
and almost invariably complain bitterly when the result is not everything that they
desire.

The Commission is often only one of a long line of organisations with whom they
have lodged similar complaints and their dissatisfaction with the results of
Commission investigative endeavours are soon lodged in extreme terms with the
Parliamentary Criminal Justice Committee, various media outlets, Ministers of the
Crown and sundry other politicians. Although there are only a handful of such
people, they invariably generate the need for response after response and tie down
valuable resources which could be far more productively used on genuine
complaints of real substance. They probably represent less than two percent of all
complainants, although by their incessant and obsessive campaigning they act
greatly to the prejudice of the Commission's credibility.

Other Factors Affecting Investigation of Complaints

The Need for Circuits to Regional Centres

The Commission is an organisation which is meant to serve the state of Queensland, not
just the Brisbane metropolitan area or the south-eastern corner. A large number of
complaints furnished to the Complaints Section have their source in centres throughout
Queensland. Given the parlous state of the investigative resources available to the
Commission to undertake its function of investigating complaints, these regional matters
create special difficulty.

To provide for the most efficient use of available resources the Commission has settled
upon a circuit arrangement whereby complaints in regional areas are accumulated and then
dealt with as a group when an investigative team undertakes a circuit to that regional area. The larger areas are fairly well served by this arrangement but particular difficulty occurs when remote areas of the state throw up one or two matters over a twelve month period. To access truly remote areas may mean that an investigative team of two members could be absent from the Commission’s Brisbane headquarters for one week to attend to one matter which in any event may require a follow up visit. It is almost inevitable that these remote areas, given the limit on resources and the Commission’s priorities, will suffer substantial delays in the investigation of their complaints.

The Commission also faces the considerable difficulty of responding immediately to complaints in remote areas, in particular complaints which have a high priority such as complaints of assaults by police officers. The Commission is currently negotiating with the Queensland Police Service for the Queensland Police Service to nominate, if not to dedicate, a commissioned officer in each region to attend to urgent Commission investigations in that region for and on behalf of the Commission investigator.

Procedural Fairness in Hearings

The Commission has already held 10 hearings in respect of matters properly categorised as Complaints Section matters. A total of 25 private hearings covering all OMD investigations have been conducted to date. These hearings have been conducted in private by application of the criteria discussed below. The procedures discussed below in relation to hearings are also applicable in respect of hearings of complaints matters.

Procedural Fairness in Investigation

The Complaints Section strives to conduct investigations impartially, expeditiously and effectively. Investigations are carried out by experienced commissioned officers. The reasons for selecting commissioned officers to carry out these investigations have been already discussed. However, it is felt that this selection carries with it another bonus relating to procedural fairness – namely, that officers the subject of false or trivial complaints will be comforted by the fact that the investigation will be carried out by an experienced officer fully acquainted with the exigencies of police work.

Not long after the formation of the Complaints Section police officers against whom complaints had been made complained that, even though the complaints against them had not been substantiated, information relating to the complaints would appear on their files and would result in adverse inferences being drawn against them upon their seeking promotion. With this in mind the Complaints Section devised a standard letter to the Deputy Commissioner of the Police Service advising him in each such case that the complaint against the officer had not been substantiated and that the Commission recommended that no reference to the matter, adverse to the officer, be made on his/her file in respect of the complaint. In each case advice that this recommendation has been made to the Deputy Commissioner is also given to the officer concerned.

Police officers against whom complaints have been made have also argued that at the conclusion of the investigation, even where the complaint is not substantiated, the complainant is given more particulars of the investigation than they are. The Commission
is torn between two competing considerations – on the one hand the desire to achieve procedural fairness in the eyes of the police officers against whom the complaints are made and on the other hand the statutory requirement that officers of the Commission maintain confidentiality in respect of matters brought to their attention in the course of their duties. The Commission’s view is that the requirement to maintain confidentiality contained in Section 6.7 of the Act does not permit it to divulge to officers complained of details of the investigation. This position should be compared with that existing in respect of information to be given to complainants pursuant to Section 2.24(4) of the Act which requires the Director of the OMD to cause a response to be given to the complainant (if his/her identity and whereabouts are known to the Commission) that states:

(a) if no action has been taken on the complaint, the reason for inaction;

(b) if action has been taken on the complaint, what that action is, the reason that action is appropriate in the circumstances of the case and the result of that action, if it be known at the time of making the response.

Fairness to Complainant

In most instances, complainants are initially interviewed by Complaints Officers following which a preliminary assessment is made by the Chief Officer of the Complaints Section. Where a determination is made that a matter warrants investigation by the Complaints Section, the complainant is reinterviewed by an investigator.

After a matter has been finally assessed, a response is furnished to the complainant in compliance with Section 2.24(4), discussed above. Furthermore, where practicable, the complainant is further debriefed by a Complaints Officer. This debriefing is conducted by telephone or, if the complainant so desires, by personal interview.

Review of Referred Investigations

In order to cope with its burgeoning workload, the Complaints Section has adopted a policy of increasing the threshold of seriousness of the complaints which it will investigate in the future. The flat for doing so is contained both in the Fitzgerald Report and in the Act. The Report envisaged that the Complaints Branch could refer "trivial or purely disciplinary matters to Chief Executives of departments or the Commissioner of Police to investigate and take appropriate action".30

By Section 2.29 after assessment what further action is necessary or desirable is left to the discretion of the Commission. As mentioned above, the Commission has adopted the philosophy of acting in accordance with the full and undiminished scheme of the Fitzgerald Report for a twelve month period to gain experience in the operation of the OMD before proceeding to modify that scheme in the light of experience. It is clear that the Commission cannot hope to deal with the volume of complaints which continues to flood into the Complaints Section, increasingly from the public sector. As a consequence given the Commission's limited capacity to provide additional staffing to the Complaints Section, it has no choice but to raise the threshold of complaints which will be

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30 The Fitzgerald Report, p.315
investigated by the Commission, referring other complaints either to the Chief Executives of departments or to the Commissioner of the Police Service to investigate. To this time less than 12% of all complaints have been dealt with in this way, although this will increase in the future. The best estimate the Commission can make, given the current receipt of complaints at 50 per week, is that it can only sustain an investigation rate of one half of the total number of receipts, namely approximately 25 per week, in particular given the fact that those complaints which are retained for investigation will by and large be matters of substance and weight requiring greater depth and intensity of investigation.

It must be remembered that those matters which are referred either to Chief Executives or the Commissioner of the Police Service for investigation will, after investigation ultimately find their way back to the Complaints Section for review to determine whether they have been properly and appropriately investigated. If they are found upon review not to have been so investigated (and there have been several instances of this already including a cavalier attitude adopted in certain police regions which smacks of a return to the type of investigation so trenchantly criticised by Mr Fitzgerald Q.C.), then those matters will either be re-investigated by the Commission or referred back for further investigation accompanied by a requisition setting forth the further steps which need to be taken to provide for an acceptable level of investigative endeavour. This review process will become increasingly burdensome in particular on the legal staff within the Complaints Section as increasing numbers of complaints are referred outside the Commission for investigation.

De-briefing of Complainants

By Section 2.24(4) of the Act a complaint of official misconduct or misconduct furnished to the Complaints Section requires a response to be given to the complainant whether or not action has been taken, detailing the action taken or the reason for inaction. The Commission, acting on the experience of overseas agencies, has determined not only to provide a written response to complainants but to personally de-brief them. The reason for this initiative, which is usually undertaken by the complaints officer assigned to each complaints team, is a view that the Complaints Section is providing a service to the public. This is a clear break from a tradition which viewed the receipt and servicing of complaints as simply a nuisance which had to be endured. The de-briefing program which has now been under way for several months has brought forth some very positive feedback and the experience to date is that most complainants, even if they do not agree with the result of the investigation, very much appreciate the opportunity of being told in person of the results of the investigation undertaken at their instigation. This program has almost certainly reduced the number of disgruntled complainants, although equally as clearly there is a certain class of complainant who will never be satisfied no matter what the extent of the investigative response has been.

Final Assessment of Complaints

Every complaint investigated within the OMD, whether by an investigator within the Complaints Section or within a Multi Disciplinary Team, is made the subject of a report to the relevant Team Leader. Each report together with the Team Leader's recommendation is then referred to the Chief Officer, Complaints Section, for further assessment. The Chief Officer assesses each matter in accordance with Section 2.29 and the guidelines
issued to him by the Commission on 5 October 1990. The options available include the following:

Cases assessed as involving a prima facie case of official misconduct or criminal conduct are referred to the Director of the OMD who in turn reports to the Chairman in respect of each matter. With the Chairman's approval, a copy of that report may be forwarded to:

- the Director of Prosecutions or other appropriate prosecuting authority, with a view to prosecution proceedings;
- to the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;
- to the Chief Justice or other principal judicial officer of the relevant court;
- to the principal officer of the unit of public administration concerned with a view to disciplinary action being taken.

Where the Director reports to the Chairman that a matter involves official misconduct and the Chairman is in agreement, the Director forwards a copy of the report to the principal officer of the unit of public administration concerned. The receipt by the principal officer of that report requires that officer to charge the person the subject of the report with the relevant official misconduct by way of a disciplinary charge. As explained earlier, a Misconduct Tribunal has jurisdiction only where the unit of public administration or the position concerned has been prescribed by Order in Council for the purposes of the Act. When no such prescription has been made, a copy of the report may be referred to the principal officer concerned for the taking of appropriate internal disciplinary action.

In many cases there may be no evidence whatsoever to support the allegations or insufficient evidence to support them. Inevitably, this is the final assessment in the majority of matters investigated.

A final assessment whether resulting in disciplinary action or not may involve making recommendations to the principal officer of the unit of public administration concerned that certain administrative changes be implemented or that certain directions be issued in order to obviate the occurrence of future complaints of a similar nature. The Commission has already issued 17 recommendations of this kind to the Commissioner of the Police Service which are discussed later in this report.

Matters the subject of report by the Director to the Chairman may result in such other action as the Chairman considers appropriate.

It is important to note that matters involving misconduct of a minor nature referred to the Commissioner of the Police Service for investigation become the subject of reports by the Commissioner to the Commission. Such reports are also reviewed by the Chief Officer, Complaints Section and in some instances are referred back to the Commissioner for further investigation.
In many instances, although no disciplinary action is recommended, the matter is referred to the Commissioner of the Police Service for officers the subjects of the complaints to be chastised or corrected by way of guidance. This is regarded not as disciplinary action but as training.

The matter may not be within the Commission's jurisdiction. In some instances, this is not apparent until the matter has been partially investigated.

Complaints Section – Record of Achievements

The Commission would contend that despite the considerable difficulties outlined above, the Complaints Section has a record of considerable achievement. The volume of complaints being received is testament to the vacuum it has filled in public life in Queensland and the degree of credibility with which it is regarded.

One of the principal achievements of the Commission has been the establishment of a multi-disciplinary section for the assessment and investigation of complaints against members of the Police Service and other public officers. As explained earlier, the establishment of the Section has been undertaken in less than ideal circumstances (at times approaching chaos) as a result of the Section opening for business before being staffed and the disruption caused by the relocation of the Commission. Its immediate and continued public acceptance is best evidenced by the volume of complaints received. This public acceptance has generally been echoed by favourable media coverage. The Section has sought to maintain the high level of public acceptance by impartially and professionally investigating complaints received by it.

As mentioned previously, the Director of the OMD is required by Section 2.24(4) to cause a response to be given to each complainant advising of the action taken and why such action is considered appropriate. In an endeavour to allay the concerns of the many complainants whose complaints will inevitably not be substantiated, the Commission has sought to improve upon the statutory requirement to notify the complainant by debriefing each complainant at the end of the investigation. Such debriefings are undertaken by Complaints Officers and are carried out either by telephone or by personal interview. This task is a time-consuming and onerous one but the Commission is confident that it is worthwhile.

Despite the volume of complaints received, the Complaints Section retains the ability to respond immediately to complaints requiring such attention. In respect of matters of an urgent nature arising in country areas, the Commission has issued guidelines and directions to the Commissioner of the Police Service pursuant to which the Commissioner causes preliminary investigations to be conducted until an officer of the Commission can take command of the situation. The Complaints Section's achievements in this regard must be considered in the light of its limited resources. It is useful to compare the workload and resources of the Section with those of like bodies in other jurisdictions. This comparison is made elsewhere in this Report.
The Commission in general and the Complaints Section in particular have been the catalyst for discernible changes of attitude to the performance of public duty. Some examples of this are as follows:

Shire Clerks have reported that as a result of the existence of the Commission, they are no longer impotent in situations where they observe behaviour of Councillors giving rise to a suspicion of corruption.

The Complaints Section has already received a number of complaints from police officers reporting suspected misconduct of fellow officers. The existence of the police club phenomenon was roundly criticised in the Fitzgerald Report. Honest police officers need no longer fear that there is nowhere to go to report suspicions of misconduct or that their careers will be adversely affected as a result of reporting misconduct.

A very practical way in which the Complaints Section has been instrumental in endeavours to change attitudes within the Police Service has been the Section's initiative in making recommendations to the Commissioner of the Police Service as a result of complaints assessed and investigated within the Section. These recommendations have been mentioned earlier.

The Complaints Section is also involved in initiatives taken by the Professional Standards Unit within the Police Service to improve the professionalism and image of the Service. Weekly meetings are held between senior officers of the Complaints Section and the Professional Standards Unit.

As mentioned earlier the Chief Officer has addressed a number of seminars and other groups of public officers in respect of duties under the Criminal Justice Act and corruption prevention measures. Officers within the Complaints Section have also addressed groups of police officers within the Brisbane area and in country regions to explain to police officers the operations of the Complaints Section and the provisions of the Criminal Justice Act.

The Chief Officer of the Complaints Section and the Director of the OMD have held discussions with senior officers of a number of departments of government that already have in place systems for detecting and investigating official misconduct. Agreements have been reached with such departments whereby the departments notify the Complaints Section of suspected official misconduct but continue to investigate such misconduct unless directed by the Chairman to transfer to the Commission responsibility for such investigation.

Problem Areas

Alleged assaults by police officers on members of the public constitute one of the principal areas of concern to the Commission. Such matters are particularly difficult to investigate for a number of reasons. Mr. Fitzgerald Q.C. exposed the existence of the police club which strongly discourages police officers from assisting in the investigation of complaints of this kind. Such complaints often suffer from lack of corroboration including a lack of medical evidence. The complainants themselves are often persons lacking in
credibility and often have criminal histories. On an optimistic note it is useful to have the regard to the Ontario experience where over a period of 10 years complaints of assault by members of the police force were reduced dramatically, at least partially, as a result of the efforts of the Public Complaints Commissioner Mr Clare Lewis Q.C. and his staff in giving priority treatment to the investigation of such complaints. The Commission is also giving priority treatment to such complaints.

The matters inherited from the Police Complaints Tribunal have been a substantial burden upon the resources of the OMD. As mentioned earlier, many of these matters are lengthy, complex and stale.

Of particular relevance are the complaints made by aboriginal persons against police officers. These complaints are disproportionately high in incidence and often occur in remote areas thus requiring the expense of investigation by circuit.

Many other complaints have been received from remote areas and these matters also have required investigation by circuit.

As the Commission continues to raise the threshold of those matters categorised as involving minor misconduct (referred to the Commissioner of the Police Service for investigation), more and more reports are received from the Commissioner of such investigations which require proper assessment by the Complaints Section. Such matters may require further investigation by the Commissioner or by officers of the Complaints Section. The poor standard of investigations carried out by the Police Service in respect of allegations of police misconduct was highlighted by Mr. Fitzgerald Q.C. Such investigations require on-going and close monitoring.

Reference has already been made to the existence of the police club phenomenon. There continues to be, in certain sections of the Police Service, a reluctance to accept, and even open rejection of, the findings of Mr. Fitzgerald Q.C., and his recommendations. On occasions, this attitude manifests itself in open hostility towards the Commission’s investigators. To counter such attitudes the Commission has been forced to engage in the expensive exercise of sending senior officers to police conferences, particularly in country areas, to explain the functions and aims of the Commission.

Despite the existence of statutory requirements upon police officers and principal officers to report misconduct and official misconduct respectively, the Commission is well aware that this duty has not always been discharged. This is once again linked to the police club phenomenon of a reluctance to "dob in your mates". The failure of principal officers of units of public administration to report official misconduct in all instances is explained, in the Commission's view, by a similar attitude and by an ignorance of the statutory duty and the non-existence of effective internal reporting systems.

Another problem faced by the Commission in the investigation of misconduct and official misconduct is the failure to report such conduct expeditiously. Matters are harder to investigate when the trail is cold or when preliminary investigations have already been carried out, often clumsily, by another agency.
The Commission has noted instances of senior officers intentionally undermining the Commission's operations. The Commission has noted similar activities among members of local authorities. Other instances have arisen among members of the public with their own hidden agendas.

By way of a final comment, the Commission stresses that the destructive effect on police community relations of police misconduct cannot be overestimated. A police service cannot be effective unless it has community support and this support will only be forthcoming when earned.

Initiatives of the Complaints Section

The officers of the Complaints Section, when examining complaints, are constantly on the alert for circumstances or procedures likely to give rise to further complaints. The Commission then makes recommendations to the Commissioner of the Police Service or other principal officer that measures be taken to obviate the recurrence of complaints of that nature. These recommendations include the following (made to the Commissioner of the Police Service):

The Commissioner of the Police Service was advised that the Commission had received complaints in relation to inappropriate response by police officers to "000" emergency calls, principally the length of time taken by police officers to respond to calls. It was recommended that the Commissioner of the Police Service give urgent attention to putting in place procedures to ensure appropriate response to emergency calls for police assistance.

It was noted that the Commission had received a large number of complaints that police members had failed to supply their names or registered numbers when requested to do so by members of the public. As failure to provide name and registered number is a breach of General Instruction 1.6, and may give rise to public perception of incivility, arrogance or deceit on the part of the police officer involved, it was recommended that all members of the Police Service be reminded of their duty to observe General Instruction 1.6.

It had come to the attention of the Commission that in cases concerning restraining orders under the provisions of the Drugs Misuse Act 1986–1987 no action was being taken by members of the Police Service to inform institutions upon which the orders operated when such orders had ceased to have effect, the current practice then being to leave it to the person whose property was subject to the order to apply for discharge of the order. It was noted that there was no onus on police officers to obtain a discharge of orders, however, in the interest of fairness it was recommended that members of the Police Service should take steps to ensure that the holder of funds (for example a bank) is advised when an order under the Drugs Misuse Act ceases to have effect, and that the most appropriate person to do so would be the arresting officer who sought the order in the first instance. The Commissioner of the Police Service was asked to direct all members of the Police Service to comply with this general practice.
It had come to the Commission's attention during the investigation of a complaint, that the investigating police officer in the matter had passed information to a private investigator for an insurance firm in relation to his investigation. It was considered that the release of information in similar circumstances may have become widespread, particularly in certain squads of the Police Service. It was recommended to the Commissioner of the Police Service that all officers be reminded of their duties under Section 10.1 and 10.2 of the Police Service Administration Act not to disclose confidential information, and of the provisions which exist for proper authorisation of the release of material through the Office of the Commissioner of the Police Service.

The Commission noted that a number of complaints had been received in relation to the execution of search warrants upon premises. It was noted that one simple measure to lessen the number of complaints would be to leave a copy of the search warrant with the occupier of the premises searched. It was recommended that the Commissioner of the Police Service implement the giving of a copy of the search warrant as a standard procedure by issuing a direction under Section 4.9 of the Police Service Administration Act.

It had come to the Commission's attention that police officers involved in an investigation under the Drugs Misuse Act had used civilian personnel in the operation as "assistants" under Section 53 of the Drugs Misuse Act. The civilians used were fellow employees of the suspect, and also informants in the matter. It was recommended that a direction be given to all police officers to exercise extreme caution in relation to the use of civilian assistants. In particular, officers should be advised that it was inappropriate to use informants as assistants.

It had come to the attention of the Commission that some police officers were involving themselves in investigations where they had a personal interest. Two instances were cited where officers had had an earlier physical or verbal altercation with a member of the public, and had then later taken part in arresting or summoning the person. In such circumstances, it was noted that the mere presence of the police officer may incite further altercation, or give rise to an allegation that the police officer has committed a breach of clause 5.3 of the Code of Conduct, requiring officers to perform their duties impartially. It was recommended that the Commissioner of the Police Service issue an appropriate direction in this matter pursuant to his power under Section 4.9 of the Police Service Administration Act.

It had come to the attention of the Commission that an Aboriginal field officer had not been allowed to attend an interview conducted by police officers with an Aboriginal youth. Even though the youth's father was present at the interview, it was considered that the circumstances as outlined did not comply with General Instruction 4.54A(c) which provides that Aborigines and Torres Strait Islanders under disability will be questioned in the presence of an independent adult person concerned with the welfare of those races. The words "concerned with the welfare of those races" were considered to connote someone with a more general involvement in Aboriginal welfare than the parent of the child. It was recommended that the second paragraph of General Instruction 4.54A(c) be
amended to specify that Aboriginal and Torres Strait Islanders under disability must be questioned in the presence of a solicitor or other legal adviser, or a person concerned with the welfare of those races. It was also considered that General Instruction 4.56A (which allows a suspect person the right at any stage of an investigation to consult with a solicitor) should be amended to apply to any legal representative (whether or not qualified to practise as a solicitor or barrister), so that the instruction could be seen to apply more readily to field officers for Aboriginal and Torres Strait Islander persons.

It had come to the attention of the Commission that General Instruction 4.54A(b) relating to the questioning of children was being widely disregarded or misinterpreted. It was noted that a practice had developed of police questioning children at school in the presence of a teacher or headmaster without a parent or guardian being present. The instruction in question requires that an adult person be present for the interview as nominated by the child or parent of the child. It was unlikely in the circumstances outlined that the teacher or headmaster had been so nominated, and in any case it was considered that as the teacher or headmaster could be considered an authority figure the child was likely to feel overborne. It was considered that in a case where it was inappropriate for a parent or guardian to be present (for example where the parent was alleged to be involved in the suspected offence) other suitable arrangements should be made, such as an officer from the Department of Family Services being present. It was recommended that the Commissioner of the Police Service issue a direction to this effect under Section 4.9 to clarify procedure in relation to questioning of children.

The Commission received a complaint that a police vehicle escorting a wide load had been driven dangerously. The Commission's investigations disclosed that guidelines regarding the conduct of such police escorts did not exist and it was recommended that consideration be given to the issuing of appropriate guidelines.

The Commission received a complaint relating to an accident at a sugar tram crossing. Officers of the Commission inquired into the use of traffic signs at the crossing. The investigation showed that the driver of a motor vehicle which collided with a cane train could have been under the misapprehension that the line was not in use as a "lights not in use" sign was present at the scene at the relevant time and had been there for some time previously. The potential danger of such signs is that persons used to seeing the signs at a particular crossing might not pay adequate attention to the crossing if it were to be used at any time. The Commission recommended that consideration be given to discontinuing the use of such signs and that sugar mills be made aware of the potential danger of their use.

An investigation of a search of premises conducted pursuant to the "emergency" power under Section 18(12) of the Drugs Misuse Act to search premises without a warrant revealed that the power was not being used solely in cases of genuine emergency. On some occasions it appeared that the power was being used simply to avoid the requirements for the obtaining of a warrant. The Commission recommended that the General Instructions be amended to provide that entry without a warrant pursuant to Section 18(12) must not be effected unless a
situation of genuine emergency arises and there exists no reasonable opportunity for the obtaining of a warrant beforehand.

The Commission recommended to the Commissioner of the Police Service, as a result of an investigation conducted by it, that he issue a direction to police officers that warrants of apprehension relating to school children not be executed at school unless police are of the view that the child is about to flee the jurisdiction or is seeking to avoid detection.

The Commission recommended to the Commissioner of the Police Service that Section 17 of the Drugs Misuse Act (which provides that body cavity searches may only be ordered by Commissioned Officers and carried out by medical practitioners) should always be complied with even where the person the subject of the search has consented thereto.

In the course of an investigation by the Commission it came to attention that police involved in the management of Police Citizens' Youth Clubs do not receive adequate training to ensure that they are fully conversant with the provisions of the Art Union and Amusements Act 1976–1984 and Regulations. The Commission recommended the introduction of a comprehensive training scheme and certain other safeguards relating to the measures to be adopted by persons promoting, conducting and assisting with art unions within the clubs.

The Commission investigated a complaint regarding the entry of a home by police officers in the early hours of the morning in pursuit of a suspected traffic offender. The Commission expressed its concern to the Commissioner that the power to enter property pursuant to section 43 of the Traffic Act 1949–1985 be exercised with appropriate restraint, particularly at night. The Commission recommended that directions be issued requiring officers to exercise this power with restraint and to take into account criteria such as the seriousness of the suspected offence and the time of day.

As a result of a complaint that the Crime Stoppers Unit had publicly issued incorrect information concerning a suspect, the Commission recommended to the Commissioner of the Police Service the implementation of certain safeguards to ensure the accuracy of information released by that Unit.

The Commission has also recommended to principal officers of other units of public administration the implementation of procedures and the issuing of directions and guidelines to address situations likely to give rise to corruption or other abuse by officers of those units.

Analysis of Complaints

The significant task of data collection associated with complaints received has been completed.
The database now established provides a source of management information for monitoring the workload, progress and performance of the Commission with respect to the complaints.

Graphs have been compiled showing key aspects of this workload, progress and performance to 31 March 1991.

The graphs highlight the following significant information/trends to date:

**Complaints Received** – (Refer graph 1(a), (b), (c), (d))

- To 31 March 1991, 1,911 complaints had been received indicating that by the end of April 1991, which will see the first 12 months of operation completed, between 2,050 to 2,100 complaints will have been received.
- 173 complaints were received in March 1991, the most in the past eight (8) months.
- The 1,911 complaints received involved 4,336 allegations against 2,815 subjects. Each complaint averages 2.3 allegations against 1.5 subjects.
Complainant Details (Refer graph 2)

The large majority of complainants are members of the public (76%).

Prisoners and detainees show the next most significant proportion (6%).
2. COMPLAINANT DETAILS
Category of Complainant

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>40%</td>
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<tr>
<td>Public Adm. Employee</td>
<td>16%</td>
</tr>
<tr>
<td>Commissioner GpS</td>
<td>6%</td>
</tr>
<tr>
<td>Police (Excl. Comm.)</td>
<td>6%</td>
</tr>
<tr>
<td>Prisoner/Detainee</td>
<td>4%</td>
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<tr>
<td>Other Principal Off.</td>
<td>1%</td>
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<tr>
<td>Politician</td>
<td>2%</td>
</tr>
<tr>
<td>Other</td>
<td>3%</td>
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</table>

**Allegation Details** (Refer graphs 3(a), (b))

Of the 4,336 allegations contained in the 1,911 complaints, 3,381 allegations representing 78% are against the Queensland Police Service.

The other significant categories are Public Service Departments (5.8%) and Local Authorities (7.5%).

The most significant allegations are:

- Failure to Perform Duties 724 (16.7%)
- Corruption/Favouritism 479 (11.0%)
- Harassment 453 (10.4%)
- Assault 449 (10.4%)
- Behaviour 436 (10.1%)

A full explanation of the types of allegations is annexed to this Report.
### 3(a) ALLEGATION DETAILS

**Subjects of Allegation - To 31 March 91**

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
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<tbody>
<tr>
<td>Leg. Assembly/Parl. Service</td>
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<td>Executive Council</td>
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<tr>
<td>Public Service Dept.</td>
<td>253</td>
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<td>Qld. Police Service</td>
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<tr>
<td>Qld. Railways</td>
<td>31</td>
</tr>
<tr>
<td>Local Authorities</td>
<td>327</td>
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<tr>
<td>Corporate Entities</td>
<td>31</td>
</tr>
<tr>
<td>Non-Corporate Entities</td>
<td>99</td>
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<tr>
<td>Courts/Registrars</td>
<td>51</td>
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<td>CJC</td>
<td>11</td>
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<tr>
<td>Other</td>
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**TOTAL = 4336**

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<tr>
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**3(b) ALLEGATION DETAILS**

Types of Allegation - To 31 March 91

<table>
<thead>
<tr>
<th>Allegation</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>449</td>
</tr>
<tr>
<td>Behaviour</td>
<td>430</td>
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<tr>
<td>Corruption/favouritism</td>
<td>479</td>
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<tr>
<td>Drugs</td>
<td>88</td>
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<tr>
<td>Evidence</td>
<td>174</td>
</tr>
<tr>
<td>Firearms</td>
<td>15</td>
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<tr>
<td>Goods/property</td>
<td>215</td>
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<tr>
<td>Harassment</td>
<td>463</td>
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<tr>
<td>Information breach</td>
<td>159</td>
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<tr>
<td>Counterfeiting</td>
<td>28</td>
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<tr>
<td>Duty breach</td>
<td>85</td>
</tr>
<tr>
<td>Misuse of powers</td>
<td>120</td>
</tr>
<tr>
<td>Arrest</td>
<td>194</td>
</tr>
<tr>
<td>Organized crime</td>
<td>28</td>
</tr>
<tr>
<td>Prosecution/Judiciary</td>
<td>80</td>
</tr>
<tr>
<td>Criminal/social omission</td>
<td>221</td>
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<tr>
<td>Searches</td>
<td>128</td>
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<tr>
<td>Traffic</td>
<td>109</td>
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<tr>
<td>Uninvest</td>
<td>0</td>
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<tr>
<td>Victimization</td>
<td>26</td>
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<tr>
<td>Warrants</td>
<td>26</td>
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<tr>
<td>Zoning/development</td>
<td>25</td>
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<tr>
<td>Miscellaneous</td>
<td>78</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>4338</td>
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</table>

**Finalised Complaints** (Refer graphs 4(a), (b))

Of the 1,092 finalised complaints, 74% have resulted in effectively no action being taken because of:

- No evidence 443 (40.6%)
- Insufficient Evidence 212 (19.4%)
- No Jurisdiction 95 (8.7%)
Further, the Complaints Section is required to operate over a geographical area which is ten times larger than that within the jurisdiction of the Police Complaints Authority. In addition, 60% of complaints against the police in the United Kingdom are resolved by mediation within the Police Force and are never referred to the Authority.

Incomplete Complaints (Refer graph 5)

Most of the incomplete complaints come from the most recent months. 118 complaints received prior to 30 June 1990 remain incomplete.

Complaints Received and Completed

Four (4) further graphs have been compiled showing a comparison of complaints received and complaints completed and highlighting the growth of the backlog of complaints during the first four months of the operation of the Complaints Section.
Figure I indicates that the number of complaints received weekly shows no trend — that is, there is no tendency for this number to either rise or fall. The number of complaints completed, however, displays an upward trend. Both series illustrate a random variation, the receipts about a constant long term mean and the completions about an upwards trend.

Figure II shows the backlog increasing steadily until about the middle of the year, after which it exhibits a tendency to stability.
Figure III shows that the cumulative number of complaints received is almost exactly linear, which implies a constant weekly rate of receipt. Cumulative completions exhibit a quadratic trend, which implies a linear increase in the number of complaints completed per week over the period.

Figure IV shows a backlog plot crossing the cumulative completion line just after the start of the fourth quarter. This, together with the constant rate of receipt of complaints implies that the backlog will be eventually wiped out.
The statistics produced to 31 March 1991 are the first sample of the Management Information collated. At this time, quality checking on the data is proceeding and coding conventions and policy decisions regarding such matters as finalisation are being reviewed.

A multitude of other statistical breakdowns is available and at the lower levels will support close monitoring of various work areas, particularly within the Complaints Section.
MULTI-DISCIPLINARY TEAMS

Establishment

In carrying on the work of the Fitzgerald Inquiry, the OMD has inherited and progressively developed and modified the investigative teams constituted within the Fitzgerald Inquiry to pursue three main areas of illegality, namely police corruption, government corruption and organised crime. In doing so, it has constituted Multi-disciplinary Teams on a more formal and structured basis and brought about greater consultation and participation in the investigative process.

In addition to the original areas, a new team has been set up to further the use of Proceeds of Crime legislation and carry out investigations in the area.

Team Structure and Management

Typically, each team is headed up by a Team Leader who is an experienced criminal lawyer with exposure to investigation and the management of personnel. Under the Team Leader there is a subordinate lawyer, a financial analyst who is a qualified accountant, most with previous experience in financial investigations, six or seven seconded police officers and a complement of support personnel. Criminal analysts are being recruited for attachment to the teams.

Three out of four team leaders worked with the Fitzgerald Inquiry and transferred to the Commission. As a result, there was a continuity of attention to Fitzgerald Inquiry matters which were taken over by the Commission, pursuant to the provisions of Section 2.20 of the Act.

The Team Leaders have a full once weekly meeting of the team, at which minutes are taken. These minutes are circulated to the Director of the Division for his review. Further, each team has been located in its own geographic area in the Commission's new accommodation at 557 Coronation Drive, Toowong. This has meant that the Team Leader has a much greater facility to manage the work of the team because of his physical proximity to the members of the team. Previously the police investigators were accommodated as a group which cut across team function and the building of an appropriate rapport between the various disciplines. The present arrangement provides for a much greater level of continuing rather than periodic management.

The Director of the OMD holds a Team Leaders' Meeting daily at 8.30 a.m. where the principal work of the team for that day is briefly reviewed. It also provides an opportunity for cross-pollination between the teams, and between the teams and the Complaints Section, Proceeds of Crime Unit, the Director of Operations, his two Superintendent deputies and the Chief Financial Analyst. The increase in co-ordination between the various units of the OMD which has resulted has been significant. It provides an opportunity for the rationalisation of resources across the Division and for the various units to act in support of each other.
Type of Investigations

The Commission's jurisdiction to conduct investigations is quite limited. The head of jurisdiction will be found in either or both of Sections 2.15 and 2.20 of the Act, namely:

- Official corruption – (Section 2.15(f)(iii));
- Official misconduct (and misconduct by members of the Police Service) – (Section 2.20);
- Organised or major crime – (Section 2.15(f)(iv)).

The Source of Investigations

There have been five main sources of investigative work flowing to the Multi-disciplinary Teams.

(i) The Fitzgerald Inquiry

The Fitzgerald Report recommended that the Fitzgerald Inquiry should continue in being while the Commission was established, following which the Commission should take over the work of the Fitzgerald Inquiry. As recommended, the establishment of the OMD occurred against the background of the continuation of the work of the Fitzgerald Inquiry with an infrastructure of procedures, systems, methods, guidelines and training being put in place while the OMD continued with 50 investigations into matters as diverse as the bribery of public officials and large scale narcotics trafficking. Most Fitzgerald Inquiry matters have now been finalised. Some were wound up when they had proved unproductive or were too historical to justify their continuation against the background of the deluge of current matters received after 22 April 1990.

To date all but five of these Fitzgerald Inquiry investigations have been concluded. Of these, two are the subject of recommendations to the Commissioner of Police; one brief of evidence recommending charges is under consideration by General Counsel to the Commission; one investigation is still continuing and one matter has been re-opened for further investigation on receipt of additional material.

(ii) The Complaints Section

The criteria for referral of matters from the Complaints Section are canvassed below. This is the source of the majority of work flowing to the Multi-disciplinary Teams.

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31 The Act, s.2.20(2)(b)
(iii) Intelligence Division

When the Intelligence Division is fully operational, the investigative teams will move into more pro-active investigations rather than reacting to complaints or information received by the Commission. The Commission will also be able to develop its own targeting of significant criminal activity. The OMD has been structured on the basis that there will be a considerable flow of such work from the Intelligence Division.

(iv) Referrals From Other Agencies

The Commission considers itself to be part of the national fabric of the administration of criminal justice. Accordingly, it has established close working relationships with other agencies with common functions, responsibilities and goals. For example, it has fostered close liaison with the National Crime Authority (NCA), the Independent Commission Against Corruption (ICAC), the NSW State Drug Crime Commission (SDCC) and interstate police services and forces.

In accordance with its responsibility for taking such action as it considers to be necessary or desirable in respect of such matters as in its opinion are pertinent to the administration of criminal justice, it has provided support to other agencies with law enforcement functions. These agencies have included the NCA, the SDCC, the New South Wales Police, the Victoria Police, the Western Australia Police and the Australian Federal Police. It has done this by providing operational support and disseminating information in accordance with the Act.

It has conducted joint operations with the Queensland Police Service Drug Squad, the NSW State Drug Crime Commission, the Australian Federal Police, the New South Wales Police, and the Victoria Police.

The Commission has received commendations for the quality and professionalism of this support.

The Commission is continuing to strengthen these relationships by sharing information and intelligence with these organisations. In addition it has gained access to their procedures and guidelines in areas of common interest. This has materially assisted the Commission in the preparation and continual updating of its operational procedures. In particular, it wishes to acknowledge the valuable assistance of the NCA, ICAC and the SDCC in this regard.

(v) Liaison with the Office of the Special Prosecutor

The Commission has maintained a close liaison with the Office of the Special Prosecutor (OSP). In particular, the Commission has provided OSP with support and assistance in respect of its investigation and prosecution functions.
Criteria of Investigation

As mentioned above, the majority of matters referred to the multi-disciplinary teams originate in the Complaints Section. In determining whether an investigation is undertaken by the Complaints Section or referred to a Multi-disciplinary Team, the following criteria are applied:

- **Complexity**
  
  Does the complaint involve one incident or a series of incidents?
  
  Does the complaint involve complex factual issues, and/or a large commitment of resources, and/or will the investigation be prolonged?
  
  If the answer to these questions is yes, then the matter is likely to be referred to a Multi-disciplinary Team.

- **Resources Needed to Investigate**
  
  Are there a large number of witnesses to be interviewed or will the matter need to be approached as a joint operation with the Professional Standards Unit of the Queensland Police Service etc?
  
  For example the incident at Inala involving large numbers of Aborigines and police, although a complaint about police behaviour, was referred for investigation to one of the Multi-disciplinary Teams as it involved the interviewing of more than 140 witnesses, both aboriginal and police.

- **Requires Static, Mobile or Electronic Surveillance**
  
  Although this criterion is not a determinant in itself, it may well indicate that a matter is likely to be complex and to require a substantial commitment of resources over time. Once surveillance, either manual or electronic is committed to any investigation, it should only be used in conjunction with dedicated investigators. To be effective, it will need to operate beyond business hours, often on a 24 hour basis with crews working back to back. Surveillance is a tool of investigation and needs to be used as such. It is wrong to ask surveillance personnel to task themselves; they have by definition only a partial view of the whole investigation.

- **Requires Covert Investigation**
  
  Where a matter requires the introduction of covert investigative techniques such as an undercover agent or the cultivation and use of a co-operating and perhaps criminally involved witness, there will be a clear need for dedicated surveillance and investigative backup which is beyond the capacity of the Complaints Section to provide.
Requires Witness Protection

Again, this criterion is not a determinant, although where witness protection is justified it will usually indicate a substantial criminal investigation.

Requires Extensive Use of Hearing and Other Compulsory Powers

The Complaints Section has been making increasing use of the hearing power to try to force a resolution to intractable investigations, for instance where the complainant and corroborating witnesses give one version of events, while the allegedly involved police officers provide another. From time to time, the use of the hearing power to examine the participants on oath has provided sufficient material to enable the Commission to determine the issue to its satisfaction, either by discrediting the complainant or sufficiently calling into question the actions of the involved police as to justify the matter being placed before a Misconduct Tribunal.

However, where there is an extensive need to use hearing and other compulsory powers, this would normally indicate that the matter should be referred to a Multi-disciplinary Team. This is particularly so where the Commission determined that some form of public inquiry is justified. The intensity of preparation required for the extensive use of the hearing process, in particular a public hearing, would lead to a substantial disruption of the complaints process were it to be left with the Complaints Section. For example the Jury Tampering and Corrective Services Commission inquiries recently conducted by the Commission.

The Avoidance of Disruption to the Complaints Process

In many ways this criterion summarises the basic consideration which underlies most decisions to refer investigations to the Multi-disciplinary Teams. It is recognised that the Complaints Section is under considerable workload and resource pressures. As at 8 April 1991 it has some 726 current investigations, and an investigative staffing of 17 Inspectors of Police (one quarter of whom are not available at any one time because of leave, courses, court commitments etc), albeit supported by lawyers and complaints officers. It has received in the first twelve months of its operation nearly 2,000 complaints.

Although it has achieved an efficiency rating of between three and four times that maintained by the former Internal Investigations Section as judged by completed investigations per investigator, it is recognised that the process is delicately poised. Any substantial disruption to the work flow would lead to an exponential increase in the backlog in very short order. There is an acute consciousness of the imperative that this disruption should not occur.

Conduct of Investigations

The mere fact that a matter satisfies the criteria for referral to a Multi-disciplinary Team by definition means that it will take significantly longer to investigate. The average time for the investigation of matters within the Multi-disciplinary Team is substantially greater
than matters dealt with within the Complaints Section. However there is a marked disparity between the least and most complex matter within the teams. Further, in order to overcome the backlog of complaints in the latter half of last year, complaint matters were referred to the Multi-disciplinary Teams for investigation, which action prejudiced the work of the teams.

Currently the Multi-disciplinary Teams collectively are attending to 80 investigations. This number is far too great to provide for the appropriate investigation of the more significant matters.

Greater selectivity in investigating complaints and the constitution of a fifth investigative team within the Complaints Section will allow the number of investigations within the teams to be reduced, (at least after the accumulated backlog in the Complaints area has been fully addressed), and should allow the teams to concentrate on those matters requiring the full range of sophisticated investigative techniques available to the teams. Individual instances of official misconduct will be attended to by the investigative units attached to the Complaints Section.

Investigative Techniques

The Multi-disciplinary Teams, because of their size and composition, have access to a greater range of investigative techniques than investigators attached to the Complaints Section. The majority of these techniques have been dealt with above in reviewing the criteria for determining whether an investigation is undertaken by the Complaints Section or the Multi-disciplinary Teams.

The essential difference between investigations undertaken by the Complaints Section and those undertaken by the teams can be reduced to the statement that Complaints Section investigations are part of a high volume process which basically entails the interviewing of witnesses and the occasional use of the hearing process. Investigation by the teams is more considered and creative. Given the nature of these investigations, there is greater justification for the application of more sophisticated and expensive techniques, in particular in terms of the allocation of resources and personnel.

Public Inquiries

One of the investigative tools available to the Commission is the ability to hold an investigative hearing. Such hearings can, if thought necessary, be public hearings. The precedent for having such hearings in public is strong; Commissioner Fitzgerald Q.C. said that his inquiry could not have succeeded without the confidence, co-operation and support of the public. The Commission likewise recognises that public confidence and accountability in its processes is vital to its continuing efficacy. It is also very conscious of the spectre of the trenchant criticism made of the National Crime Authority for its seemingly obsessive secrecy which, to a substantial degree, has resulted from its failure (largely resulting from the secrecy provisions in its legislation) to conduct any of its business in public. Australia is an open society, and Australian citizens do not accept with equanimity the operation of organisations in total secrecy.

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12 The Fitzgerald Report, p.10
On the other hand, the Commission is very conscious of the conundrum posed by the holding of public hearings, namely the risk of acting unfairly by the receipt of hearsay material and the resultant damage to the reputations of innocent persons. Consequently the public hearing process cannot be undertaken lightly and, in the Commission's view, should only be reserved for serious matters of substantial public interest which go beyond the conduct of the individual and point out some issue of public principle.

In this context the Commission has undertaken three public inquiries to this time and commenced a fourth, namely:

1. The Jury Tampering Inquiry arising out of the trials of Austin and Herscu;

2. The Corrective Services Commission Inquiry arising out of allegations of the involvement of prison officers in prostitution and drug trafficking;

3. The Huey Diaries Inquiry arising out the use by Channel 7 of extracts from the diaries of former Superintendent John Huey and their apparent misappropriation from the Property Office of the headquarters of the Queensland Police Service;

4. A Hearing has commenced on payments made to Aldermanic candidates.

A report of the first inquiry has been released publicly with an accompanying Issues Paper. A report is in the process of preparation in respect of the second inquiry which was quite massive in its extent. The third inquiry is likely to lead to the laying of criminal charges.

In a real sense public inquiries undertaken by the Commission have all the indicia of a Royal Commission, from the framing of the terms of reference through to the preparation of a report for presentation to Parliament. They are very resource intensive. For example the inquiry into the allegations against officers of the Corrective Services Commission required intensive investigation by an internally constituted task force of ten investigators working continuous overtime for a period of three months. It is estimated that the inquiry absorbed 6,000 man hours of investigation, four weeks of public hearings and the interviewing of 150 persons of whom 44 were called as witnesses.

Organised and Major Crime Investigations

Investigations into organised and major crime are special on several levels, namely jurisdiction, philosophy and resources.

Limited Jurisdiction

The Commission's jurisdiction to pursue organised and major crime is limited in scope by Section 2.15(f) to matters which, "in the Commission's opinion are not appropriate to be discharged, or cannot be effectively discharged by the Police Force or other agencies of the State". Further, in Section 1.3 which sets forth the Objects of the Act, it is clear that the Commission has only an interim responsibility to take measures to combat organised or major crime.
The Commission's Approach

The philosophy adopted by the Commission in fulfilling its statutory charter on organised crime has been:

- to undertake this function as far as possible in co-operation with the Queensland Police Service, or other investigative agencies so as to enhance the capacity of law enforcement to deal with the challenge of organised or major crime;

- to act as an ice breaker, a catalyst to the undertaking of more sophisticated investigations, using surveillance, electronic interception, undercover agents, cooperating witnesses and the long term commitment of resources in an attempt to ascend the ladder of organised criminal endeavour.

Limited Resources

Given the pressures of other work, the Commission has been in a position to commit the full time resources of only one team to this work, namely 6 to 8 investigators, one financial analyst, one lawyer and support staff with surveillance and technical unit support.

Examples of Organised Crime Investigations

These matters are either currently:

- before the courts; or

- the subject of continuing investigation. Given the public nature of this hearing, the information provided is therefore necessarily brief and has been treated in an anonymous way:

  - to comply with the sub judice rules; and
  - to preserve operational security.

Operation A

Targeted two significant heroin dealers. This led to the discovery of an ethnic group in New South Wales as the source of supply. The Drug Enforcement Agency of that State was approached to participate. The operation concluded with seven persons facing 22 charges relating to drug trafficking, being the original two Queensland targets and five members of a New South Wales based ethnic group.

Operations B and C

Operation B was undertaken in conjunction with the Drug Squad of the Queensland Police Service and concentrated on the Gold Coast. The investigations gathered evidence of large scale narcotics trafficking in Queensland and New South Wales. The Commission obtained the assistance of the New South Wales State Drug Crime Commission (SDCC) when the investigation encompassed targets in New South Wales.
A similar but separate operation (Operation C) was commenced by the Queensland Police Service and concentrated on significant drug trafficking in Brisbane. After a few months the QPS approached the Commission for assistance. The operation extended to the Gold Coast and later, the Northern Rivers District of New South Wales where assistance was obtained from the local Drug Squad. There was some cross over with the targets in Operation B.

Both operations were wound up simultaneously after 6 and 8 months respectively and led to the charging of 36 defendants with more than 200 charges for trafficking in heroin, cocaine and cannabis.

Most of the offenders are awaiting trial.

There is a confiscation of profits application for an amount in excess of $1 million pending in respect of one of the major targets in New South Wales.

The operations utilised surveillance and electronic interception extensively, as well as investigators attached to the Commission, QPS, SDCC, New South Wales Drug Enforcement Agency and a local Drug Squad in New South Wales. It was an excellent example of co-operation between law enforcement agencies transcending State boundaries.

**Operation D**

This operation concerned the purchase of stolen motor vehicles from New South Wales. An undercover agent was used to purchase a number of vehicles and to gather intelligence. Commission surveillance teams were utilised extensively during the operation.

Near the completion of the investigation, and at the stage when several arrests were imminent, the Commission received information that additional offences were being committed in New South Wales. The Commission subsequently liaised with the New South Wales Police as it appeared public officials and a New South Wales police officer may have been involved in the car stealing scheme. A total of 1440 man hours of investigative and surveillance time was utilised during the operation.

At this stage, 7 persons have been arrested and charged in New South Wales on various conspiracy charges. A major participant in the scheme has pleaded guilty. Persons have also been charged with offences relating to the unlawful issuing of New South Wales drivers licences.

**Operation E**

The Commission was approached by an interstate Drug Squad to assist with surveillance and the possible arrest of a drug trafficker who had previously absconded on bail and was believed to be resident in Queensland. Commission surveillance confirmed this suspicion and the suspect was arrested. At the time of his arrest a search warrant was executed and he was found to be in possession of 12 kilograms of cannabis and $17,000 in cash at his premises. Documents located during this raid revealed that the offender had unencumbered assets totalling over $400,000. Further inquiries have led to charges being laid under the Crimes (Confiscation of Profits) Act 1989–90 in respect of these assets.
The trafficking trial and tainted property charges are to proceed in coming months and are expected to confirm that the suspect has been a large scale professional trafficker in cannabis for at least the last five years. At the conclusion of these hearings, he is to be extradited to New South Wales to face charges relating to the cultivation of substantial amounts of cannabis.

**Operation F**

During Operation B, one of the targets was arrested in respect of several counts of trafficking in cocaine. After his arrest he approached the Commission and indicated that he would co-operate in obtaining evidence against his supplier in return for receiving the benefit of that co-operation at his sentencing. As a result, a joint operation was mounted with the Australian Federal Police targeting the source of supply. After a six months operation, the supplier was arrested and charged with trafficking in a dangerous drug (cocaine).

**Operation G**

The Commission has been approached by the Queensland Police Service for assistance in respect of the investigation of a suspected large scale money laundering operation.

A senior lawyer and senior financial analyst are working in conjunction with Queensland Police Service and Telecom employees in this investigation, which has been under way for approximately five months. This operation entails the use of surveillance and extensive financial investigation.

This is regarded as a very difficult but potentially very rewarding investigation and is expected to continue for several more months. Investigators are currently interstate attempting to capitalise on recent developments which may provide a breakthrough.

**Operation H**

The Commission received information of possible police involvement in corrupt activities with persons operating in an industry which cannot be mentioned for operational security. After prolonged investigation which continued for approximately 12 months, the evidence gathered, although significant, was insufficient to enable prosecution action to be undertaken. The Queensland Police Service was advised of the details of the racket and took steps to tighten procedures to prevent a repetition of this conduct. Information has recently come to the attention of the Commission that the illegal activity has recommenced, involving other police officers who apparently have overcome the safeguards put in place. The investigation has been re-activated and at this time there would appear to be good prospects of gathering sufficient evidence for possible prosecution.

**Operation I**

The Commission received information of a leading crime figure being involved in arms and drugs trafficking. A sophisticated operation was undertaken involving the use of surveillance and a co-operating informant to gather evidence for the purposes of prosecution. After intensive investigation extending over several months, the investigation
was aborted because of a development external to the Commission which risked exposing the informant and risking his security if the operation was to proceed.

**Operation J**

The Commission was approached by the Australian Federal Police and the Queensland Police Service to participate in a joint operation concerning the blackmail of a prominent businessman to raise money to finance a drug importation. The Commission agreed to support the operation by the commitment of its surveillance resources. The operation continued for nine months. Twenty-five arrests were made involving 70 charges including:

- conspiracy to murder;
- theft;
- fraud;
- importation of narcotics;
- extortion.

**Operation K**

The Commission is presently involved with an interstate law enforcement agency in the conduct of a national investigation. The targets are well known criminals from interstate, who have connections in Queensland. They each have a long and notorious criminal history. They have been the subject of numerous previous operations which have failed because of suspected police corruption. The operation is likely to continue for some time. It is drug related. No further details can be given because security is of paramount importance in view of the unfortunate history of the investigation of these targets.

**Support to National Operations**

The Commission has provided its support to several operations by interstate and national law enforcement agencies over the past twelve months. That support is given either by the commitment of surveillance or by undertaking investigations in support of the operation. The following agencies have been assisted in this way:

- National Crime Authority
- Western Australia Police
- New South Wales Police
- Victoria Police
- Northern Territory Police
The Organised Crime Task Force Proposal

As mentioned above, the Commission is empowered to perform such investigations to the extent that the Queensland Police Service and other agencies are unable to do so. As the capability of the Police Service is extended, the Commission's current responsibilities are intended to accrue to that body. Accordingly, wherever possible, the Commission conducts such investigations as far as possible on a co-operative basis.

To this end the Commission proposed to the Queensland Police Service that a Standing Organised Crime Task Force be created to provide a progressive response to the challenge of organised crime, with its expertise growing with its exposure to the task. In this regard the Commission was conscious of the experience of leading overseas crime fighting organisations such as the US Federal Bureau of Investigation, the Organised Crime Division of which has substantially destroyed the effectiveness of the Italian organised crime group La Cosa Nostra over a period of two decades.

To the Commission's knowledge, a number of ethnically-based and other organised crime groups are active in Queensland but have not previously been the subject of dedicated targeting on any continuing basis.

Overseas experience indicates that there is a long lead time in developing within law enforcement the expertise necessary to tackle such groups. The basic steps are:

- the collection and analysis of all information available throughout the law enforcement community;

- the establishment of an intelligence collection plan which actively seeks to capture intelligence on current criminal activities and to identify the principals involved in that activity;

- the design of an operational plan for the pro-active investigation of the organisation, in particular by the use of surveillance (mobile and electronic), undercover penetration (by police agent – a very difficult long term endeavour), the discovery of informants and attempts to encourage co-operation by peripherally involved persons to gather evidence, the pursuit of the money trail by financial investigators, and the conduct of secret hearings.

- the leap-frogging from operation to operation, widening the net by targeting the organisation rather than individuals, gradually working to the top of the tree.

Although the whole endeavour can be simply stated, it is anything but simple in practice. It requires an understanding of the culture involved, including the language, the organisation, the attitudes, strengths and weaknesses of the principal players, infinite patience and a preparedness to commit resources for the long term. It is expensive of resources for no immediate return and therefore requires the understanding, support and commitment of the supervising body such as the Parliamentary Criminal Justice Committee.
When the FBI decided to undertake organisation based rather than individually based targeting, it was concerned that the necessary reduction in the "kill rate" would not be tolerated by its political masters. However the US Congress showed great maturity in accepting the change in direction as a necessary step, as a result of which the long term viability of the program was guaranteed.

As mentioned above, the Commission has the philosophy of acting wherever appropriate in combination with other law enforcement agencies, both local and interstate. It has formalised those arrangements with the AFP, Victoria Police and the State Drug Crime Commission of New South Wales through the execution of Memoranda of Understanding. The Commission is currently negotiating with the Queensland Police Service to enter a similar arrangement with that body for the investigation of organised crime.

The typical Memorandum of Understanding requires the participating parties to act in support of each other wherever possible, to share intelligence material, and to provide for management of joint operations by the constitution of management and operational committees.

Complexity of Investigations

A few examples of the range and complexity of matters handled by the multi-disciplinary teams and the resources required follow:

Complaint of Excessive Force

Complaints were received by the Commission of the use of excessive force by police in dispersing a gathering of aboriginals who attended a function at Inala. Further allegations were made concerning violence in the watchhouse towards arrested persons, victimisation of persons involved in the incident and a complaint related to a separate incident involving alleged violence by police towards aboriginals.

A Multi-disciplinary Team devoted four investigators headed by an inspector for in excess of three months. Over 2,300 man hours (approximately one working year) were required to interview over 140 people. All interviews were tape recorded, transcribed and summarised, with signed statements being obtained from some persons. Apart from the initial complainants, aboriginal persons were not interviewed by the Commission at Commission premises, or a police station, or Government offices, to minimise the chance of witnesses being intimidated by their surroundings, although such a course was more time consuming than other forms of investigation. The final report with recommendations is in the process of being written.

Corrupt Conduct by Local Authority Employee

An investigation into allegations against a council employee for corrupt conduct required simultaneous approaches to be made to a council and a business to obtain documents relating to the purchasing of goods and services. Documentation from both the council and the business for a period of 26 months was taken. From this 1,200 records were generated by computer, each record encompassed plant and equipment details, order details, invoice and other details. Over 220 hours were required for entry and analysis of
this information and the production of a detailed financial profile of the employee which extended over three years to identify expenditures in excess of his known income. A two day investigative hearing was held. In total approximately 500 man hours have been devoted to this investigation to date. A report is in the process of being drafted.

The "D" List

At the conclusion of the Fitzgerald Inquiry there were a substantial number of Police Officers against whom adverse allegations had been made. Some were the subject of investigation by the Special Prosecutor, others faced an uncertain future. The list of persons adversely mentioned who were not the subject of inquiry by the Special Prosecutor became known as the "D" list.

With the establishment of the Commission the holdings with respect to all Police Officers mentioned during the Fitzgerald Inquiry were passed to the new Commission.

It was unsatisfactory both from the point of view of the individuals concerned and the Queensland Police Service that these officers should continue to serve in the Police Service whilst they were under a cloud.

Reviews were undertaken into the Commission's holdings with a view to either clearing those Police Officers so they could serve in the Police Service with an unblemished record or taking disciplinary action where there was evidence to substantiate the allegations.

The Commission undertook this onerous task in addition to the substantial number of matters which it received from the Fitzgerald Inquiry and the flood of public complaints.

A senior lawyer of the Commission who served on the Fitzgerald Inquiry from its inception undertook this review. Many hundreds of man hours were expended in collating the Commission's holdings and reviewing the material whereupon reports were made to the Professional Standards Unit of the Queensland Police Service either that the Commission would take no further action in respect of these allegations or that further investigations were warranted.

This process has been completed with respect to some 257 Police Officers and investigations are continuing with respect to a further 20 Police Officers. The remaining matters are complex and the material voluminous. The Commission has determined that the officers involved will be examined during a series of private hearings.

Rochedale Dump Inquiry

The Commission commenced an investigation into the circumstances surrounding the granting of a Waste Disposal Tender to Pacific Waste Management Pty. Ltd. in early February 1991 following a series of complaints detailing alleged improprieties on the part of the Brisbane City Council being made to the Commission by Mr Jim Soorley, the recently elected Lord Mayor.
Investigations into these allegations were undertaken by a senior lawyer, the Chief Financial Analyst and police investigators attached to the Commission. Independent Queen's Counsel was briefed to review the findings of the Commission.

The Commission investigators were given complete access to, and inspected and copied, large quantities of relevant documents held in the possession of:

(i) Brisbane City Council;

(ii) Pacific Waste Management Pty. Ltd;

(iii) Blake Dawson Waldron (Solicitors for Pacific Waste Management Pty. Ltd.);

(iv) Thieless Contractors Pty. Ltd.

Interviews were conducted and in most instances statutory declarations were compiled. Sixteen people were interviewed over a period of five weeks, with most interviews being relatively lengthy as the issues involved were complex. Approximately 550 man hours were devoted to the project. A letter of advice confirming the findings of the Commission following the full investigation, was forwarded to all interested parties on 19 March 1991. Due to the limited time within which the investigations had to be completed and the interested parties advised, resources were diverted from other investigations which were temporarily suspended. A considerable portion of the time spent by investigators related to the perusal, identification and collation of Council documents dating from when the Council first identified in 1985 a need for the development of an alternative to the sanitary land-fill method of refuse disposal in the Brisbane area, until the awarding of the tender in February 1991. A full report is being prepared.

Drug Trafficking Corruption

In late 1989 the Commission received information via an informant that a senior serving police officer had corruptly received monies from a drug dealer in order to allow the drug dealer to operate within impunity. In excess of 90 persons were interviewed by Commission officers and 70 statements taken. Essentially, the investigation took some seven months and involved two police officers devoting their entire time in interviewing police, other witnesses, examining documents and corroborating an intricate circumstantial case. On the 20th July 1990, the Commission forwarded a brief of evidence to the Special Prosecutor recommending for his consideration that the police officer concerned be charged with two offences of official corruption and one of perversely failing to carry out his duty.

A Court Official and Others

On the 30th November 1990, the Commission forwarded a brief of evidence to the Office of the Director of Prosecutions recommending charges of false pretences against a Clerk of the Court, a junior public servant, a police officer and a businessman. On the 12th April 1991, the Clerk of the Court was charged with false pretences.
The investigation was received in March 1990 and required the attention of a police investigator and support staff, supervised by a senior lawyer on a full time basis for the full nine month period. A document examiner expended approximately 30 hours of forensic examination time with total hours devoted to the operation approximating 1,500. Due to the serious nature of the complaints against the public servants involved, several meetings were held with the Director of Prosecutions and senior members of his staff to discuss the conduct of future criminal proceedings.

Misconduct in Community Councils

Numerous allegations of misconduct were made about three community councils in the Torres Strait Region. A preliminary investigation was conducted with one investigator travelling to the area to interview complainants and others.

Initially it was decided to allow the process of change and review taking place amongst the communities to run its course before proceeding further. Members of the Parliamentary Committee expressed disappointment in such a course and an investigation was subsequently mounted.

Four investigators travelled to the region for two weeks. They travelled to six islands and interviewed approximately 100 people. Fourteen Notices or Authorities issued under the Act procured 45 boxes of documents which were returned to Brisbane. From these documents 2,344 computer entries have been made to date. The investigators spent 8 days on a Harbours and Marine vessel which supplied support whilst carrying out its normal duties. Approximately 550 man hours of investigators time have been devoted to this matter so far with an additional 130 hours devoted to the preparation and entry of computerised information for financial analysis. The investigation is continuing.

Analysis of Multi-disciplinary Team Investigations

An analysis of Multi-disciplinary Teams' investigations is provided in the form of pie charts to show the following:

- Source of investigation;
- Category of investigation;
- Outcome of investigation;
- Current status of matters with positive recommendations.

A further diagram is provided in respect of the OMD (that is, the Multi-disciplinary Teams and the Complaints Section) indicating matters in which charges have been laid or disciplinary action taken.
MULTI-DISCIPLINARY TEAMS INVESTIGATIONS
(31 MARCH 1990 TO 17 APRIL 1991)

1. SOURCE

TOTAL INVESTIGATIONS - 219

EXPLANATORY NOTES
Commission of Inquiry - Matters originating from Commission of Inquiry
Intelligence/CJC - Investigations Initiated by CJC
Complaints Section - Investigations as a result of complaints from external sources including other law enforcement bodies
Other Law Enf. Body - Investigation in co-operation with other bodies not initiated by external complaint
Other - Providing assistance to other bodies, incidents directly involving CJC personnel/property
MULTI-DISCIPLINARY TEAMS INVESTIGATIONS
(31 MARCH 1990 TO 17 APRIL 1991)

2. CATEGORY OF INVESTIGATION

**Chart**

- **Police**: 85 (38.8%)
- **Local Government**: 42 (19.2%)
- **Public Administration**: 36 (16.4%)
- **Organised Crime**: 26 (11.9%)
- **Politicians**: 5 (2.3%)
- **Other**: 25 (11.4%)

**Total Investigations**: 219

**Explanatory Notes**

- **Police**: Members of Qld Police Service
- **Local Government**: Elected Representatives & employees of Local Government
- **Public Administration**: All holders of office in Units of Public Administration excepting Local Government
- **Organised Crime**: Organised criminal activity not involving allegations against Police
- **Politicians**: Members of Legislative Assembly
- **Other**: Includes investigations, surveillance for interstate bodies, information gathered and supplied to other bodies, offences detected against CJC personnel / property
OFFICIAL MISCONDUCT DIVISION
(31 MARCH 1990 TO 31 MARCH 1991)

5. MATTERS IN WHICH CHARGES HAVE BEEN LAID/DISCIPLINARY ACTION TAKEN

TOTAL MATTERS - 158

- Criminal Charges Recommended - 19 (11.9%)
- Official Misc. Charge Recommended - 11 (6.9%)
- Counselling Recommended - 23 (14.5%)
- Other Disc. Action Recommended - 28 (17.6%)

Before Courts - 78 (49.1%)

EXPLANATORY NOTES
Before Courts - indicates number of persons charged
Criminal Charges - includes recommendations to Special Prosecutor, Director of Prosecutions, Director of Public Prosecutions and Commissioner of Qld Police Service (QPS)
Official Misconduct - refers to disciplinary charge(s) under Criminal Justice Act and includes recommendations to Commissioner, QPS
Counselling - includes recommendations to Commissioner, QPS, and Departmental Heads
Other Disciplinary Action - includes recommendations to Commissioner QPS and Departmental Heads for dismissal, demotion, transfer, close supervision, reprimand, salary reduction/forfeiture, deferral of increment
Other Details Relating to Investigations Conducted by the Official Misconduct Division (that is, the Complaints Section and the multi-disciplinary investigative teams)

- Authority to enter public premises granted under S.3.2 of the Act
- Notices to Furnish/Produce under S.3.1(1) of the Act
- Public Hearings Conducted
- Private Hearings Conducted
- Pages of Transcript
- Summons to Attend issued under S.3.6(1) of the Act
- Notices to General Manager of Corrective Centre re Attendance of Prisoner under S.3.13 of the Act
- Witnesses Examined at OMD Hearings
- Exhibits Received in OMD Hearings
- Persons Charged as a Result of Commission Investigations #
- Criminal Charges
- Disciplinary Charges Laid

# Refers to both investigations conducted solely by the Commission and to investigations conducted in conjunction with other Agencies.

Corruption Prevention

A Statutory Function of the Commission

Section 2.20(2)(f) makes it a function of the OMD to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct. Ways in which the Commission is fulfilling this function are detailed below:

Addresses to Public Sector Officers

- Officers of the Commission have addressed various public sector groups (including members and officers of Local Authorities) in relation to the responsibilities of management in respect of corruption prevention. Such addresses have also dealt
specifically with the responsibilities of principal officers to report suspected official misconduct to the Commission pursuant to the Criminal Justice Act.

The Commission has also participated in seminars conducted by the Consultancy Bureau for officers of the public sector relating to their responsibilities. Eight seminars took place attended by, on average, 60 persons per seminar. Most of the persons who participated in these seminars can be categorised as middle to senior management within the public sector. The Commission's sessions were presented by the Chairman, the Director of the OMD and the Chief Officer of the Complaints Section. The Commission's session dealt with responsibilities under the Criminal Justice Act, examples of corruption within the public sector, the need for principal officers of units of public administration to implement effective internal reporting systems and protection given to whistleblowers. The Commission is of the view that these sessions though time-consuming were an effective way of communicating with a significant percentage of senior officers of the public sector.

Corruption Prevention Officer

The Commission is presently interviewing applicants for the position of Corruption Prevention Officer. This officer's principal duties will be:

1. Direct and manage the Corruption Prevention Program;
2. Develop and implement corruption prevention strategies;
3. Undertake high level liaison with other authorities in relation to corruption prevention;
4. Participate in the management of the Commission.

Future Initiatives

The concept of corruption prevention is based on the principle that prevention is better than cure. It is also based on the premise that corruption prevention is a managerial function. Administrative and managerial failures in an organisation are likely to present opportunities for those with a corrupt intent to exploit the system. Common features of managerial weaknesses conducive to corruption include lack of or poor policy, unenforceable legislation, inadequate instructions, excessive discretion, unnecessary procedures leading to frustrating delays and lack of effective supervision.

Corruption prevention aims to address these weaknesses by the introduction of administrative and managerial improvements to systems. With these principles in mind it is the intention of the Commission through its corruption prevention program to promote the view that corruption prevention is an integral part of good management. The Commission will also promote systems of accountability whereby persons are responsible for their own acts and those of the persons they supervise. The Commission intends to discharge this function by:
Giving advice to principal officers on the basis of the analysis of complaints made to the Commission. It will frequently be necessary for the Commission's corruption prevention officer to follow-up such advice to assess whether the recommendations made have been effectively implemented.

Bringing to the attention of principal officers the existence of the Commission's corruption prevention function and inviting them to seek advice from the corruption prevention officer in respect of situations susceptible to exploitation.

The Commission's officers will continue to address seminars and other groups of public sector employees in relation to corruption prevention measures.

The Commission also welcomes invitations from the public sector to participate in working parties dealing with codes of conduct and other corruption prevention measures.

Proceeds of Crime

The Rationale

The accumulation of assets and money by criminal activity has been practiced by criminals since time immemorial. Providing courts with the ability to retrieve those assets is new.

Legislation was introduced in America in 1970 in the form of the RICO (Racketeer Influenced and Corrupt Organisations) and the CCE (Continuing Criminal Enterprise) provisions. These provisions recognised that it is incumbent on the legislature to provide law enforcement agencies with sufficient powers to attack the business of crime, that is, to trace, freeze and secure property and money derived directly or indirectly from crime.

The end result of twenty years of experience in the United States with this legislation may be properly described as extremely successful. The most recent figures incorporating the total assets retrieved for the relevant 12 month period:

- 1989 – value of assets forfeited: $331,200,000;
- 1990 – value of assets forfeited: $460,000,000.

In the six years since the U.S. Asset Forfeiture Fund was established, it has collected more than $1.5 billion.

Thus, the American experience indicates that this legislation can result in vast returns. However, this is but one aspect of its effectiveness because in attacking and destroying the criminal's motive it strikes at the very heart of criminal activity.

Further, through the sophisticated money tracing techniques which accompany this legislation, it greatly enhances the prospect of catching the "Mr Bigs" who were previously safely removed from the vulnerable forefront of criminal activity.
It is now generally agreed by law enforcement experts the world over that the tools of asset forfeiture and money tracing are extremely effective weapons in the fight against crime. The reasons for this were described by Royal Commissioner Frank Costigan Q.C. in 1983 as:

"The first thing to remember is that the organisation of crime is directed towards the accumulation of money and with it, power. The possession of the power that flows with great wealth is to some people an important matter in itself, but this is secondary to the prime aim of accumulating money. Two conclusions flow from this fact. The first is that the most successful method of identifying and ultimately convicting major organised criminals is to follow their money trails. The second is that once you have identified and convicted them you take away their money; that is, the money which is the product of their criminal activities."\(^{39}\)

Australia has in recent years enacted its own legislation:

**Commonwealth:** Proceeds of Crime Act 1987

**Queensland:** Crimes (Confiscation of Profits) Act 1989

All Australian states now have forfeiture legislation in some form.

Although the Australian experience is of short duration, it is very promising.

In the 1989 financial year the National Crime Authority (NCA) "froze" (that is, restrained, awaiting determination by litigation) assets totalling $5.5 million. In the 1990 financial year the NCA "froze" assets totalling $29 million, an increase of 400%.

**Establishment of The Team**

One of the responsibilities of the Commission involves the investigation of organised or major crime where that function is not appropriate to be, or cannot be, effectively discharged by the police force or other agencies. (Section 2.15 (f)(iv)).

Because of the opportunity presented by the Crimes (Confiscation of Profits Act) 1989–90 to retrieve substantial assets and to attack major crime, a Criminal Assets Section was established within the Commission.

The team consists of a lawyer and a financial investigator who together have over 30 years experience in criminal litigation and investigation.

**Investigations**

The team was established in September 1990. There are now thirteen matters under review. Some of these matters have their source in the QPS, others in the Commission. Eleven relate to drugs, one to illegal gambling and one to alleged fraud.

\(^{39}\) See the Report of the Royal Commission into the Activities of the Ship Painters and Dockers Union
Assistance to Queensland Police Service

In late 1990 it became apparent that the Drug Squad was in urgent need of assistance with potential assets forfeiture matters. The Director of Prosecutions Assets Team had not been established and the Drug Squad was without a financial analyst or legal adviser who could guide and assist them in a growing number of urgent assets matters.

A policy was devised whereby the services of the Commission Assets Team would provide assistance when requested by the QPS in the following circumstances:

1. The matter must be substantial (so as to fall within the Commission's guidelines of "organised or major crime");

2. Only financial and legal assistance is provided (that is any police investigation required it is conducted by QPS not the Commission);

3. Matters must have realistic prospects of success;

4. Commission work must take precedence.

The Director of Prosecutions now has an Assets Team but its function is to prosecute. The Commission function is to investigate. Because there is no blurring of roles a very good rapport has been developed with the Director of Prosecutions Team as indicated by the frequent contact and interaction between the two teams which has achieved the present high level of efficient operation.

Results

It should be noted that Queensland legislation (as well as the Commonwealth and all other state legislation except New South Wales) is conviction based. (That is, an application for forfeiture can only be made after the accused has been convicted of an offence from which the asset derived.) In this regard the first trial in respect of which a forfeiture application is soon to commence. Assets worth $220,000 may be forfeited if the accused is convicted of trafficking in narcotics. Significantly, although it is only a circumstantial case the prospects of success have been enhanced because of exhaustive financial tracing resulting from preparation for the possible criminal forfeiture.

The legislation is already changing the approach of law enforcement and not only improving the potential for revenue retrieval, but also the prospects of conviction.

Specifically in relation to Commission asset matters, $430,000 in assets has been frozen. A further $410,000 is expected to be restrained in coming months, making a total of $840,000. Other matters appear promising and substantial although investigations are insufficiently advanced to predict amounts or outcomes.

To summarise, all indications, even at this early stage, are that the confiscation system is operating successfully. A good rapport exists between the Commission Assets Team and the Director of Prosecutions Assets Team, and requests for assistance from the QPS are directed to both Teams. By combining technology and experience and the willingness of
other Commission lawyers or financial analysts to assist if necessary, a small team is able to handle the matters which have been referred to it.

**Official Misconduct Division – The Problems**

Any treatment of the functioning of the OMD since the coming into force of the full provisions of the Criminal Justice Act on 22 April 1990 would not be complete without a reference to the problem areas which have created the greatest difficulty in meeting its statutory obligations.

**Effective Investigative Resources**

The Division’s greatest need is the constant demand for investigators at the work face to address the more than 700 current investigations. To determine to what extent the investigative establishment is in fact available to undertake the work of the OMD, an exercise was conducted which reviewed a six month period from 1 October 1990 to 1 April 1991. In this period total available working days were 129. When down time due to recreation leave, sick leave, court commitments and official courses was taken into account, the percentage of days lost represented 27.45% of available working time. The result of this deprivation was to reduce the effective investigative strength within the Complaints Division from 17 to 13 Inspectors of Police.

This chronic situation has the potential to substantially depreciate the functioning of the OMD, given the pressures and workloads which are unlikely to diminish, but to the contrary, are likely to increase. One possible solution which has great attraction for the Commission is to follow in the footsteps of the Independent Commission Against Corruption in New South Wales and appoint civilian staff to one-third of its investigative positions. This would:

- substantially reduce the leave and course component of unavailable down time;
- provide a corps of investigative personnel who would act as a reservoir of accumulated expertise to brief Queensland Police Service personnel upon secondment on Commission procedures, practices and techniques;
- assist in overcoming a perceived lack of independence in investigating allegations against Queensland Police personnel; and
- provide a healthy level of competition within the ranks of investigators (this has been the experience of the New South Wales ICAC).

It is envisaged that such so called civilian investigators would in fact be former police officers of at least 10 to 15 years service, of substantial investigative experience and of unblemished character, reputation and integrity. Indeed, the Commission has commenced a recruitment of such personnel, originally to perform the function of criminal analysts but in view of the quality of applicants, it has determined that those persons should be re-designated Tactical Investigators and assist in the actual investigation of Commission matters. They would suffer the restriction of not being sworn in as Constables of the
Queensland Police Service unless the Commissioner of the Police Service is prepared to have them appointed as Special Constables.

The advantage for the Queensland Police Service would be the return to that Service of a substantial number of experienced investigators. Given the fact that the Commission has been accused from time to time (quite unfairly in its view), of taking the "cream of the Queensland Police Service" to the prejudice of the fight against general crime, the Commission would anticipate that such a proposal should receive widespread support within the Police Service.

Time Taken in Recruiting Police Staff

As mentioned above, the Commission undertook the full complaints function as and from 22 April 1990, which function was previously shared between the former Internal Investigations Section of the Queensland Police Service and the Police Complaints Tribunal. The Commission considered that it was inappropriate to transfer the investigative staff assigned to those bodies purely as a matter of policy in view of the trenchant criticism made of the operation of those bodies by Commissioner Fitzgerald Q.C. in his Report.

Consequently the positions without the incumbents were transferred to the Commission on 22 April 1990. Thereafter the Commission had to wait four months for its full complement of investigative personnel to be selected and transferred to the Complaints Section. The Commissioner of the Police Service was good enough to provide an interim staffing of six Acting Inspectors of Police, but even so, by the end of the four months, namely by September 1990, the Complaints Section had accumulated a backlog of more than 628 matters.

QPS Approach to Commission Police Contingent

Another difficulty is created by the seeming inability of the Queensland Police Service to understand and accept that the police contingent attached to the Commission is totally separate from the Queensland Police Service. This occurred on the recommendation of the Fitzgerald Inquiry and has the force of statute, in particular Section 2.56 of the Act. This section provides (in relevant part):

"(2) In discharge of his duties an officer of the Commission: . . .

(e) being any other officer, is subject to the direction and control of the Executive Director, the Director of the organisational unit in which the officer is employed, and any other officer of the Commission to whom he is for the time being made subject by such lastmentioned Director;

and not to any other person or authority that, but for this provision, might be taken to have had control and direction of him."

Despite the clear statutory intention there continues to be substantial interaction between members of the QPS contingent attached to the Commission and the wider Police Service, on occasions without reference to the Director of Operations, an Assistant Commissioner
of the Police Service who is responsible for the supervision of the discipline and performance of duty of the Commission's police contingent.

Further, given the sensitivity of the work, the close vetting procedures for the recruitment of staff, the long lead times involved in the selection process and the relatively small number of police personnel attached to the Commission, there remains a high rate of turnover of staff which acts to the considerable prejudice of the work at the Commission, in particular:

- the selection for promotion and transfer of seconded police staff within the secondment period;

- their selection for courses and the requirement for them to be subject to general QPS directives such as the requirement of the Commissioner of the Police Service that all accumulated leave be taken within the next 18 months.

As pointed out above, this latter requirement will have a substantial prejudicial impact on the work of the Commission.

In the Commission's view, investigators seconded to the Commission should, except in exceptional circumstances, be seconded for the period and appropriate arrangements to prevent any prejudice to their careers should be made by police regulation.

CONCLUSION

The OMD has implemented as far as is practically possible the full scheme of the Fitzgerald Report and has trialled it for a period approaching twelve months. Certain difficulties have been identified, in particular those relating to the volume of complaints and the inadequacy of current resources to deal with that volume. Further, the OMD is desirous of undertaking a new direction in the investigation of major or organised crime.

The Commission is acutely aware that any decisions it takes are likely to impact upon the Parliamentary Criminal Justice Committee and the wider community. It has attempted to set forth in detail in this chapter the current situation, its historical context, the options available, the criteria for decision making and its preferred course.

The Commission will now await to hear whether the Parliamentary Committee has any fundamental objection to the proposals.
WITNESS PROTECTION DIVISION

The need to protect persons who provide information and evidence to law enforcement authorities is a recent international phenomenon. In the last two decades, international narcotic trafficking above all else, together with its exorbitant profits, has introduced a new era into law enforcement operations as many persons who may have been prosecution witnesses have been either murdered or otherwise harmed. Indeed, this has occurred on a number of occasions within our own Nation.

Various Australian law enforcement authorities have set up ad hoc witness protection operations, generally learning from their own experience in this activity. To date attempts to address this problem nationally have not borne fruit, an important consideration given that those involved in serious criminality do not recognise State borders.

There would undeniably be many benefits for witnesses and other categories of threatened persons for law enforcement agencies, the criminal justice system and the community generally, if witness protection was a responsibility shouldered at a national level. Indeed, this is implicitly recognised under Section 2.51 (2) (f) of the Act.

To be effective, however, this would require a degree of State and Federal agency agreement that is not yet apparent. The Commission will support viable moves towards a National Witness Protection System. In the meantime, as required by Section 2.51 (2) of the Act, the Commission will endeavour to fulfil such a responsibility within Queensland.

Witness Protection is a labour and resource intensive activity fraught with potential pitfalls; perceived failures which however justified the perception, are almost guaranteed adverse publicity. On the other hand success conversely can be guaranteed to be totally unremarked. This fits any definition of an intrinsically thankless activity.

Prior to the Fitzgerald Inquiry, Queensland, like most other States and Territories, had not previously had any systematic approach toward providing a structured form of witness protection, sometimes for an indefinite duration. This Commission inherited from the Fitzgerald Inquiry, both witnesses requiring protection and the ad hoc procedures adopted for their protection.

During the Fitzgerald Inquiry, a number of vital witnesses were identified, who it was recognised required protection in order to ensure their availability to give testimony. In addition, it was necessary to protect some Inquiry staff. As a result, a Witness Protection Unit, with staff who had very limited training and experience for this function, was formed specifically to service the Fitzgerald Inquiry requirements.

No recognised formal guidelines on procedures to be adopted were set in place. This resulted in the Unit adopting practices learned from a “ring-around” of other States and otherwise formulating procedures to overcome problems as they were occurring.

Recommendations of Fitzgerald Inquiry

The Fitzgerald Report squarely identified the need for witness protection on an institutionalised basis:
"A professional Witness Protection Unit is an essential component of a progressive criminal justice system. Legislation is necessary to define the circumstances and terms upon which witnesses are provided with protection".\footnote{34}

**The Act**

The recommendation was given effect in the Act, with witness protection made the responsibility of a Witness Protection Division within the Commission.\footnote{35}

From its inception, the Commission recognised that much work needed to be done to bring witness protection to a high level of efficiency and professionalism.

The role and function of the Division is laid out in Section 2.51 of the Act, and the Division is working toward a charter in order to comply with these statutory requirements.

There are a number of procedural difficulties which are neither statutorily defined in the legislation nor are precedents available. The Commission is progressively overcoming these difficulties when they are identified during operations, or by testing various procedural mechanisms and at the same time recognising that flexibility is paramount as witness protection operations in this country involve the "breaking of new ground".

**Conduct of Review**

As a first step, the Commission sought the services of an expert in the field to evaluate the Commission's current procedures and practice. This review was conducted during September/October 1990, and a confidential report was submitted setting out some fifty-nine (59) recommendations. The report was evaluated by the Commission executive and all recommendations considered appropriate were programmed for implementation within the Division.

**Witness Protection Committee**

In line with the recommendations arising out of the Independent Review of the Witness Protection Division, a Witness Protection Committee has been formed within the Commission to consider administrative issues and make decisions in respect to relevant aspects of persons applying for the Commission Witness Protection.

The Committee which convenes on a needs basis is comprised of (The Chairman or Deputy Chairman and three others, form a quorum):

- Director of Operations (Chairman);
- Director, Official Misconduct Division (Deputy Chairman);

\footnote{34}{The Fitzgerald Report, p.318}
\footnote{35}{The Act, s.2.50, 2.51, 2.52, 3.32}
Commission Executive Director;

Police Superintendent, Operations;

Police Inspector – Witness Protection Division.

The role and function of the Committee includes making decisions concerning:

- applications for admission to the Witness Protection Program;
- applications for withdrawal from the Witness Protection Program;
- the level of protection to be provided;
- applications for temporary withdrawal from the Witness Protection Program;
- the relocation of witnesses;
- new identities for witnesses;

The Committee also considers and decides on appropriate matters of policy and procedure as relevant to Witness Protection Division operations on a continuing basis. The need for flexibility has been identified.

The Commission decided policy with respect to witness protection, is a policy of relocation with certain checks and balances. Close personal protection will only be provided in exceptional circumstances.

Decisions of the Witness Protection Committee are recorded in writing and ratified by the Chairman.

Structure and Resources

Some 23 police officers and two support staff under the direct command of an Inspector are attached to the Witness Protection Division. The Director of the Division, who also has responsibility for the Commission's Police Establishment, is an Assistant Commissioner of the Queensland Police Service.

Female representation within the police staff of the Division has become an operational necessity and to this end one female has been transferred to the Division. It is intended that further female police members will be available to perform witness protection duty in the near future.

Resources of a specialised nature, for example secure communications equipment, firearms and protective equipment, motor vehicles and secure premises, have been allocated by the Commission. In addition, assistance is rendered by the Commission Technical Unit when appropriate, in respect to the installation of security surveillance equipment in strategic areas such as 'safe houses' (where witnesses under close personal protection are housed).
The Commission's Surveillance Unit is also utilised on appropriate occasions to conduct covert observations associated with witness protection functions.

**Procedures**

There is an increasing demand for witness protection in Queensland and indeed an increasing demand nationally. The following standard procedures have been developed to facilitate the operation of the Witness Protection Program:

**Criteria for Application**

The Act prescribes the conditions for entry of persons into the Witness Protection Program. Accordingly, a law enforcement case officer, nominating admission of a witness to the program, is now required to complete a comprehensive Commission application form and submit it together with a detailed report of the circumstances surrounding the applicant to the Witness Protection Division for threat assessment via his QPS supervisors.

**Threat assessment process**

Upon receipt of the application and report of the law enforcement case officer, an experienced member of the Witness Protection Division conducts a comprehensive threat assessment on the applicant. This report, together with a recommendation of the Witness Protection Division's Officer In Charge and the Superintendent Operations, is referred to the Witness Protection Committee for consideration and adjudication.

**Forms of Protection**

Upon favourable consideration of an application by the Witness Protection Committee, the applicant may be offered protection in any of the following forms:

- **Close Personal Protection** – 24 hour protection with police officers from the Witness Protection Division guarding the protectee at covert premises on a permanent basis until relocation, or the threat subsiding.

- **Relocation** – Covertly re-establishing the protectee to a safe location either within Queensland or interstate. This form of protection has been adopted by the Witness Protection Committee as the primary witness protection policy of the Commission. These witnesses are often also "on call" and receive visits as appropriate by Witness Protection Division members to supervise their protection and to solve everyday problems.

- **"On Call" Witness** – This facility is utilised to assist persons who have been assessed as "low risk", and assures contact with the Commission in order to monitor the existing threat level.

This category of witness is provided with a free '008' telephone communication contact with the Commission.
Communication Facility – A 24 hour Operations Communication Room is an initiative which has been established within the Commission, staffed by members of the Witness Protection Division. This facility ensures 24 hour communications availability contact with the Commission and allows for the reporting of urgent incidents when immediate response can be generated.

Additionally, this facility also provides for after hours contact with the Commission to receive complaints of official misconduct, as well as a 24 hour contact point for all Commission operations.

Psychological & Medical Examination & Assessment

Historically, no psychological assessment or medical examination has been conducted on protected witnesses.

It is now Commission policy as a condition of entrance into the Witness Protection Program that all witnesses upon admission, undergo psychological assessment to determine the effect protection may have on their personality and medical examination, more particularly in respect of HIV and Hepatitis B contamination.

The Witness Protection Division is currently using the services of an eminent Psychologist and with his assistance, is in the process of establishing a panel of other suitably qualified Psychologists to ensure availability of service on a 24 hour basis.

New Identities for Protected Witnesses

The Witness Protection Division has, with approval of the Witness Protection Committee, opened liaison with appropriate authorities for the obtaining of new identities for protectees following the completion of their commitments to the relevant law enforcement agency.

To facilitate this process, members of the Witness Protection Division have developed procedures with relevant State and Federal agencies to effect identity change whilst ensuring the anonymity of the protectee is maintained.

Formalisation of Agreements

Experience has identified the necessity to formalise agreements between the Commission and the protectee by way of contractual documentation (which has been developed).

A number of forms have been implemented to clearly indicate the responsibilities and obligations of both the protectee and the Commission whilst the protectee remains in the Witness Protection Program.

Such documentation includes:

- Offer of Protection;
Memorandum of Understanding;

Undertaking as to New Identity;

Temporary Release of Protectee from Witness Protection Program (for specific reasons);

Voluntary Withdrawal of Protectee from Witness Protection Program;

Withdrawal of Witness Protection to Protectee;

Witness Contact form – every contact with a witness is recorded;

Tape Recording of "threat assessments";

A critique document has been formulated for use by witnesses who use this facility in an effort to gain feedback to ensure occupants are protected in a professional manner.

The Witness Protection Division is in the process of formulating a documentary contractual agreement for utilisation by the relevant law enforcement agencies seeking the services of Commission protection.

Experience has repeatedly shown the necessity to outline, in clear and concise terms, the obligations which are cast upon the individual law enforcement agency to ensure that Witness Protection Programs are carried out in a cost-effective manner.

In the past some protectees, who have been admitted into the program on a limited term basis, have been maintained in the program for an excessive period of time due to a law enforcement agency failing to honour the original commitment or to provide up-to-date advice.

The "user pays" initiative is being researched as the Criminal Justice Act is silent on the issue of cost liability for protected witnesses. Recent inquiries by the Executive Officer within the Premier's Department have indicated that Government policy is that the "user pays" for such services.

**Witness Protection Register**

A Witness Protection Register is kept in accordance with Sections 2.51(2)(e) and 2.52 of the Act.

**Secure Accommodation**

Secure accommodation has been established within the Commission premises so that urgent temporary secure accommodation can be provided, to protected witnesses, persons being assessed for threat, or for holding witnesses who are otherwise in lawful custody.
This accommodation is used frequently for various categories of witnesses, and has proved to be highly suitable for short-term protection.

This secure accommodation has been designated under the Police Service Administration Act as a "Police Establishment" clearly enabling these premises to be used for custodial purposes.

**Usage of Witness Protection Division**

To date the law enforcement organisations who are found to use the Witness Protection Division are:

- Office of the Special Prosecutor;
- Queensland Police Service;
- Criminal Justice Commission – Complaints and Investigative teams;
- Corrective Services Commission.

The majority of protected witnesses emanate from Queensland Police Service operations.

**Liaison with other Agencies**

The Witness Protection Division maintains liaison with its interstate and federal counterparts. Each agency has reciprocated arrangements to assist in operations.

The Witness Protection Division also maintains an excellent working relationship with inter-departmental agencies, both Federal and State, whose co-operation is necessary in the interests of such a program.

**National Witness Protection Initiatives**

As has been stated, there would undeniably be many benefits for witnesses and other categories of threatened persons, if witness protection for law enforcement was provided at a national level.

The necessary degree of State and Federal co-operation is not yet apparent although there have been some encouraging developments. However, the Commission is playing its role.

The Officer-in-Charge and one other police member staffing the Witness Protection Division attended the National Witness Protection Pilot Committee meeting (1990) where liaison points were established that may eventually result in a future national program.

Under the Act, the Commission is required to work towards a National Witness Protection Program. It is acknowledged that little research has been undertaken into witness protection in this country and that the Commission is addressing witness protection more than any other authority. It is recognised that until the Commission's own program is
better established, then there is little it can offer to initiate a national program. Current developments are that:

- a National Witness Protection Pilot Committee has been established and the Commission is represented on this Committee by the O/C Witness Protection Division;

- it is proposed that the Commission develop a workable program of procedure and policy to put before the next national meeting;

- interstate liaison has commenced on the development of reciprocal arrangements for witness protection operations;

- some preliminary discussions have been held with other Queensland Government organisations in order to indicate potential needs.

This Commission will continue to promote the creation of a National Witness Protection Program, in the meantime fulfilling this responsibility within Queensland. In so doing, the Commission, despite its recent exposure to the field, has been seen as a leader in the field and its expertise sought by other agencies.

**Recruitment, Selection and Training**

Witness protection is arduous and demanding work requiring considerable personal attributes on the part of those performing this duty. The recruitment of suitable staff is therefore a critical issue. One possibility being researched is some form of psychological testing, following models borrowed from the USA and Canada.

Due to the unusual nature of this duty, efforts are being made to ensure personnel are regularly rotated. Initiatives are in place to have more police officers trained to perform this type of duty, and at the same time ensuring their career prospects are maintained within the normal policing stream.

The Commission's experience in this field has resulted in it assuming a central role in witness protection and associated training nationally. Some initiatives are:

- Enhancement of personal protection skills and the identification of imminent danger is an ongoing training requirement.

  In October 1989, the Fitzgerald Inquiry/Criminal Justice Commission ran a Witness Protection Course to which invitations were extended nationally, resulting in representatives from other states attending. This was an inaugural course, aimed at sharing the expertise accumulated during the Fitzgerald Inquiry. Although it is apparent that more is to be learned, this organisation was the first to conduct such a course.

  In December 1990, two Witness Protection personnel lectured on problems associated with identification change and interstate relocation to a national symposium held in Sydney, NSW.
In February 1991, two Witness Protection personnel attended and assisted with the running of a two week Witness Protection Training Course in Perth, Western Australia.

The Commission will conduct an enhanced Witness Protection Course later this year. It is proposed that this course will be "in house" to Witness Protection Division staff, and include selected QPS representatives.

A specialised Firearm Training Course is in an advanced stage of development.

Some basic training has been conducted in relation to report writing and computer skills for Witness Protection staff.

Some basic driving training skills are being taught.

In order to ensure a professional standard of service, a Witness Protection Manual is being developed. Although initially envisaged as an internal document, this may well have a wider application.

Work Load

During 1990/91 the work load has been considerable. Recently, the Division had 3 x 24 hour close personal protection operations being conducted simultaneously. Additionally, the Division was required to service the "on call" witnesses it then had in the Witness Protection Program.

Applications for protection processed since 4 November 1989 (until 10 April 1991) are:

- threat assessments made - 45
- persons taken into program - 34
  (in various forms)

Court Security

The extent to which court Security is a Witness Protection Division responsibility has not been finally determined. Due to the continual demand for such a service, initiatives are being undertaken to relieve the Division of this responsibility with respect to QPS protected witnesses.

CONCLUSIONS

Witness protection is a labour and resource intensive activity fraught with potential pitfalls. It is an area where problem solving is the norm rather than the exception. Protectees will on occasion behave in a totally unpredictable manner. Associated with this is the difficulty of an ever present awareness of both electronic and print media ever willing to capitalise on any mistakes that might be made, however trivial. On the other hand, success is almost invariably unnoticed.
Due to the inordinately high cost associated with witness protection, further development of policy will continue to relentlessly pursue cost effective operations.

In order to preserve the integrity of the Commission, it is necessary to conduct an effective, efficient and highly professional Witness Protection Division. However, it must be recognised that the provision of such a service is cost intensive and beset with all kinds of potential danger. To err will bring untold criticism. However, mistakes are inevitable. The best the Commission can ask of the public is to enquire into any failures we might experience and provided that we have acted in a rational and sensible manner, in the interests of those persons who may be protected, then to give due understanding to the difficulties encountered in accepting the responsibility and accountability for this most difficult and unenviable task.
RESEARCH AND CO-ORDINATION DIVISION

The Fitzgerald Inquiry examined numerous issues, not only relating to the functioning of the Queensland Police Service, but also to the functioning of the entire criminal justice system in Queensland. In doing so, the Commission attempted to obtain as much balanced and objective information through general research as was possible. However, in most of the areas with which the Commission was concerned, there were few research findings available.

The Act followed in a fairly systematic way some of the major recommendations enunciated by the Fitzgerald Inquiry. Understandably the Act could not be specific in all respects. Instead it offered a mandate to this Division to conduct research into the functioning and administration of criminal justice in the state. It necessarily follows that this provision places extensive responsibilities upon the Division in terms of defining what is urgent and what can be postponed. More specifically the Act prescribed the role and functions of the Division as:

a.  (i) To conduct research into problems encountered by the administration of criminal justice in the state.
    (ii) To conduct research with a view to recommending law reform in various areas.

b. To co-ordinate the activities of all other agencies in the state concerned with the administration of criminal justice.

c. To make known results of the research that the Division conducts.\(^{36}\)

An examination of the numerous recommendations of the Fitzgerald Inquiry that concern the research and review functions that are assigned to the Research and Co-ordination Division reveals that almost every aspect of the justice system needs the benefit of balanced and systematic research. This implies that the Division should have staff trained not only in research methodology but more importantly in the understanding of the role and functioning of the administration of justice in the State.

Another aspect which needs to be understood is that answers to most of the issues raised by the Fitzgerald Inquiry cannot be delivered overnight. Admittedly some issues will take much longer to deal with than the community and even the policy makers would wish.

The process is further complicated when the Division is asked to conduct research without sufficient time for planning and design. This process also leads to delays in the completion of projects that have been prioritised (see below).

The Division was established in early March 1990, with the appointment of a Director, but it took almost six months to appoint sufficient appropriately trained researchers. It seemed that the tradition of research in the criminal justice field had either not developed in

\(^{36}\) The Act, s.2.45
Queensland or had disappeared. Even substantial improvements in the salary structure, sufficient to attract middle level academics was not enough to produce satisfactory results. However, the present team of researchers forms a sufficient core. The Division consists of seven professional staff - three lawyers and four social scientists; two research assistants and three administrative and secretarial employees comprise the support staff. This staff base is extended when necessary by contracting out particular research projects. The Division also administers the library of the Commission.

Most of the Division’s functions require interdisciplinary approach, and the lawyers and social scientists work side by side. Each research project is headed by professional staff and other staff are allocated according to the nature and breadth of the topic. It will be clear from the activities of the Division described below that each researcher is involved in more than one research project. This procedure was not only necessary, it was a deliberate decision. In the long run it will be beneficial to develop a group of researchers with expertise in a number of areas and knowledge of other disciplines.

The Library

An organisation with a wide range of functions requires an efficient documentation service. This combines the functions of a library and an awareness service. The staff of the organisation, senior lawyers, police officers, intelligence and financial analysts, management officers and researchers require most up-to-date developments in their field of interest. The establishment of a library with such diverse requirements and the demands of selective acquisition, efficient inter-library loan service and a good reader service required an experience librarian.

Initially the Commission engaged a librarian, seconded from the Department of Family Services, for a period of six months, and at the same time began a search for a suitable librarian. A librarian with considerable experience was appointed in April 1990. The library is adequately resourced and currently engages a staff of one part-time and two full-time qualified librarians and one support officer.

The library has developed a collection of basic legal material and through a selective acquisition policy has established a collection of books, reports, etc. The Commission was very generously assisted by the Queensland Parliamentary Library, the State Library, the Australian Institute of Criminology, through donations of spare volumes. The Commission is grateful for the help. This staff base is extended when necessary by contracting out particular research projects.

Priority Setting

The Fitzgerald Report indicated a considerable number of criminal justice issues requiring attention. Establishing priorities was an early necessity. The selection of priorities was initially governed by the need to identify the topics of most urgent concern to be dealt with given available resources. As detailed below, other considerations had also to be taken into account.

In general, the research program was established having regard to the findings and recommendations of the Fitzgerald Inquiry and the provisions of the Act. However, the
Division also had regard to debates in Parliament and the media, and discussions with the members of the Commission and various academics specialising in related areas.

A long list of issues on which research was needed was produced, and from this list a number of topics were selected as having some priority. The areas of research selected were:

- SP Bookmaking;
- Police Education and Training;
- Crime and Justice in Queensland (an initial survey);
- Community Policing and Crime Prevention (a comparative study);
- Prostitution;
- Construction of a Criminal Justice Data Base.

While it would have been convenient to ignore other demands, given the state of research in criminal justice in Queensland, it was not possible to disregard other emerging issues of importance and so the Division has had to take up additional work. In particular, the Commission had to take into account the recommendation in the Fitzgerald Report for a "comprehensive review" of gambling in light of the Government's stated intention to introduce gaming machines at an early stage. The Commission was also requested by the Chairman of the Parliamentary Committee to examine the laws pertaining to homosexuality. More recently an investigation by the OMD into alleged jury interference disclosed that facets of the operation of the jury system required urgent examination.

The Division uses various methodologies in order to conduct research and these methodologies will vary depending upon the issues under consideration. However, they could be generalised as follows:

- Methodology concerning research in the administration of justice; and
- Methodology for research concerning law reform.

The first takes into account all the scientific aspects of research design and implementation. Appropriate and necessary statistical techniques are also utilised. Also, the analysis is presented with the help of appropriate diagrams and tables.

The methodology for research in the area of law reform is somewhat different. From the beginning, the Division took the view that in the process of law reform one must necessarily seek the opinions of the wider community. In doing so, the Division also determined that before seeking public comments it must inform the public of the issues involved. For example, in the review of prostitution-related laws, the public had to be informed as to what the major issues of concern to the community are, so that they can respond in a meaningful manner with regard to the types of controls or regulations that are required to deal with prostitution. Also, wherever practicable, the research methodology
also includes examination and analysis of laws (as well as research findings) in other jurisdictions within Australia and overseas.

Publications Released

According to these objectives the Division prepares issues papers on areas requiring review of the laws. While this is the general practice it may be necessary, in exceptional cases, to modify the procedure. For example, the report on Gaming Machine Concerns and Regulations, described below, was not preceded by an Issues Paper because of the time constraints imposed by the Government.

During the 12 months of its operation, the Division released the following publications.

Reforms in Laws Relating to Homosexuality – An Information Paper

The paper examined the social, moral and ethical issues concerning homosexuality, the AIDS threat, a review of public opinion on the subject, a review of legislation in other Australian and overseas jurisdictions and finally a list of options based on these experiences. The paper did not make any specific recommendations to change the current legislation in Queensland however, it pointed to some of the concerns which the legislators should address, for example, the age of consent, the distinction between public and private homosexual conduct, and whether soliciting should be retained as a separate offence. The paper was released at the end of May, 1990.

Report on Gaming Machine Concerns and Regulations

This report examined potential criminal issues associated with the introduction of gaming machines and made recommendations designed to minimise risks of criminal activity involvement. Given the original proposed timetable of months for the introduction of the machines it was not possible to examine social or other related issues. There has been substantial acceptance of the Commission's and Parliamentary Committee's recommendations in the gaming machine legislation.

SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry – An Issues Paper

The paper canvasses issues relating to illegal SP Bookmaking, such as the link between SP Bookmaking and police corruption, the link between the SP industry and organised crime, the cost of illegal bookmaking to the community, the loss of Government revenue, the problems with enforcement of the law relating to SP Bookmaking. The paper also listed some options for the control of illegal bookmaking.

The issues paper was released in early December 1990. Responses to the paper are being considered and a comprehensive report on the subject is now in draft form.

The Division also made a submission to the Department of Tourism, Sport and Racing, in response to the Green Paper entitled "The Development of the Racing Industry in Queensland".
Review of Prostitution–Related Laws in Queensland – Information and Issues Paper

The paper raised some of the legal, social, health and philosophical issues surrounding prostitution. It raised the arguments for and against the involvement of the criminal law in the area of prostitution. It presented a range of law reform options for consideration by the public. The paper was released in early March 1991. A number of submissions have been received and are being examined.

The Jury System in Criminal Trials in Queensland – An Issues Paper

The paper, prepared in conjunction with the Commission’s investigations into allegations of jury interference, examines aspects of the operation of the jury system in Queensland. It considers the question of jury vetting, the composition and selection of the jury panel, protection and privacy of jurors, etc. The paper was furnished to the Chief Justice of the State in April 1991 pursuant to Section 2.19(1) of the Act together with the OMD report "Report of an Investigative Hearing into Alleged Jury Interference".

Directory of Researchers

The Directory lists researchers in Australia by areas of interest and current research projects. This volume was released in February, 1991. It is of considerable assistance in contracting out research.

Tasks Accomplished and Ongoing Projects

During the last 12 months of the Division’s operation the following programs were initiated:

Police Education and Training

The Fitzgerald Inquiry in its report observed that pre– and in–service training of Queensland Police Officers was totally inadequate. In order to change the basics of police culture, the Commission recommended that the entire education and training program for police officers be improved.

In July 1990 the Police Commissioner, in consultation with Sir Max Bingham Q.C., the Chairman of the Commission announced the formation of the Queensland Police Service Education Advisory Council. The Council consists of members with a wide range of expertise and who represent interested groups. Professor Paige Porter, Dean of Education of the University of Queensland, was nominated as the Chairperson and the membership included officers from the Commission, Department of Employment, Vocational Education, Training and Industrial Relations, Department of Education, Queensland Police Service, Queensland Police Union, New South Wales Police Academy, and the Australian Police Staff College.

The Council invited tertiary institutions in Queensland to make submissions with regard to training programs. After considerable discussions of the programs the Council recommended a two semester university–based comprehensive training program for new recruits. The two tertiary institutions that were chosen to provide part of the training
were the Queensland University of Technology and Griffith University. This new training program began in February 1991 with the recruitment of about 400 new cadets and they were assigned to the two universities in equal proportions. According to the plans the recruits are expected to spend the first semester at the universities and the training program for the second semester is to be conducted at the Queensland Police Academy.

The Advisory Council also recommended a total restructuring of the Queensland Police Academy to facilitate the introduction of the new training program. However, it appears that the second semester training program at the Queensland Police academy will not proceed as planned, at least for the first batch of recruits. The restructured academy needed the approval of the Honourable Minister for Police and Emergency Services and because of bureaucratic complications this had to be delayed. Instead a contingency plan is being prepared so that the second semester training which begins on 26 June, 1991 can proceed. This creates numerous problems, not the least of which is the assessment of the impact of this new education program on the Queensland Police Service.

Community Policing

The Fitzgerald Inquiry recommended that community policing be adopted as the primary policing strategy. Overseas developments in community policing clearly indicate that in order to embrace this strategy the organisation of the Police Service requires significant changes and adjustments. In order to assist the Queensland Police Service, the Commission, in association with the Australian Institute of Criminology, organised a national seminar on "The Police and the Community in the 1990's" in Brisbane in October 1990. The conference was well attended and the keynote speech was delivered by an internationally known scholar, Professor David Bayley of the State University of New York, Albany. Following the conference the Commission assisted the Community Policing Branch of the Queensland Police Service in developing a state strategy for community policing. The Commission also participates in training of police officers in community policing.

Monitoring Police Reform

Under Section 2.15 of the Act, the Commission was given wide ranging responsibilities for monitoring and reporting on the reform of the Police Service. Section 2.45 (2) (f), (g) and (h) gives the Research and Co-ordination Division of the Commission the major responsibility in this regard.

In this regard in October 1990, the Commission assumed a responsibility formerly performed by the Implementation Unit set up for an interim period following the Fitzgerald Inquiry. Progress in implementing reform in what is now the Police Service is currently overseen by a joint Commission/Police Service implementation committee.

There were 140 discrete recommendations concerning the Police Service contained in the report of the Fitzgerald Inquiry. That report also set out a timetable for complete implementation by December 1992.

Some 105 of these recommendations have been implemented to date. The remaining recommendations are in various stages of implementation.
It must be emphasised that the progress to date has been achieved through co-operative action by the Police Service, The Consultancy Bureau and the Police Education Advisory Council in particular as well as a number of other individuals and organisations. The Commission's direct involvement in a number of reform programs is discussed elsewhere in this submission.

A brief overview of the progress made to date follows.

Restructuring of the Police Service

The Fitzgerald Inquiry identified the need for restructuring of the Police Service with a view to introducing efficient management. A number of recommendations were made in order to provide a clearer career path for officers. A completely new approach to education and training was recommended in an effort to change the police culture. The following list contains a number of specific steps taken to implement recommendations in this area:

. Integrated master plan for management of restructuring devised and modified as necessary.

. Senior police ranks and most senior civilian positions filled.

. All regional offices except Rockhampton now established, all to be established by June. Regional personnel recruitment and support systems establishment well advanced and generally on target apart from constraints on necessary civilian recruitment.

. New merit-based appointment and promotions system in place.

. Objective merit-based selection criteria and psychometric testing established for entry to new Recruit Certificate Course.

. Tertiary course established.

. In-service training courses for Commissioned Officers, Senior Sergeants and Sergeants proceeding to target.

. District Education and Training Officers and Regional Training Education Co-ordinators in process of selection.

. Academy and Chelmer reviews commenced.

. Regional personnel officers in place. Regions to determine when they have capacity to assume full personnel function.

. Human Services Officers (Welfare and Counselling) in place. Procedures and programs under development.

. 38 hour week shift roster undergoing trial.
Operational reforms

Recommendations in the area of police operations addressed such matters as the regionalisation of the service, civilianisation and provision of adequate resources. In this respect the following steps have been taken:

- The Commission commenced Forensic Services resource assessment in conjunction with general review of provision of forensic services.
- Regional resource evaluation commenced.
- Police prosecution and legal advice function under review.
- Civilianisation proceeding - some difficulties being experienced from budgetary constraints and classification delays.
- Community Policing Support Branch strategic plan approved.
- Regional Community Policing Co-ordinators in place.
- Regional Community Policing trials being developed. Existing policing strategies undergoing evaluation.
- Computer Services Branch Review completed, Strategic Plan prepared.
- Alternative Enforcement and Funding Strategies being considered in the Commission Research and Co-ordination Division projects.
- Joint operations by the Commission and Task Force on Proceeds of Crime matters.
- Negotiations under way to minimise extraneous police duties performed for other departments/agencies.

Accountability mechanisms

The Fitzgerald Inquiry observed a serious lack of accountability in the Service and paid considerable attention to developing procedures to overcome this deficiency. It was recommended that the Police Complaints Tribunal be abolished and its function be taken up by the Commission. It was further recommended that a streamlined system be developed to deal with disciplinary matters in a more inquisitorial manner. The following steps have been taken to date in implementing these recommendations:

- Strategic Plans for senior levels and functional units, including regions, completed recently.
- Performance appraisal system for leadership receiving attention.
Crime recording system undergoing review.

Disciplinary procedures working as intended. The Commission legal officer seconded to advise and assist in preparation of disciplinary and misconduct briefs.

Professional Standards Unit (PSU) operational, working in conjunction with the Commission (particularly Complaints Section).

PSU in conjunction with Assistant Commissioners/Regions developing supervisory training programs.

The Commission compiling complaints database. Compatible complaints database being prepared for Professional Standards Unit.

Financial management policies to Public Finance Standards being developed.

Regions progressing towards budget autonomy.

Accounting manual under review in conjunction with staged introduction of MSA.

Inspectorate staff being appointed. Program being developed.

The Commission believes substantial progress has been made in implementing the reform program. Other aspects of this process appear elsewhere in this submission. Much remains to be done.

Crime and Justice in Queensland

The lack of co-ordinated criminal justice information makes it difficult to describe and project the nature, pattern and level of criminology in the state. Citizens do not have a proper appreciation and understanding of the workings of the justice system. This research attempts to deal with the problems associated with the above. A draft report is currently being examined.

SP Bookmaking

A large number of submissions were received in response to the Issues Paper on "SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry". Besides analysing these submissions, the research also includes such aspects as the estimated level of SP Bookmaking operations, the nature of law enforcement concerning SP Bookmaking, its effect on the Police Department, its links with organised crime, the management of law enforcement, etc. The research also examines in detail laws relating to SP Bookmaking in various Australian jurisdictions. A draft report is currently being reviewed.
Review of Prostitution–Related Laws in Queensland

Submissions in response to the Issues Paper are being received and analysed. This research will use a number of other sources of information—a survey of sex workers, a survey of public attitudes towards prostitution, and evaluations of the working of prostitution laws in Victoria, Western Australia and New South Wales. In order to assist this research project a working party on organised crime and prostitution and a liaison committee with the Health Department have been established. The final report of this research is expected to be completed in the latter half of 1991.

Survey on the Attitude of the Public to Police Reform

In early November 1990, the Honourable Minister for Police and Emergency Services expressed a desire to elicit the views of the Queensland population on reforms in the Police Service initiated as a result of the recommendations of the Fitzgerald Inquiry. A marketing research firm was commissioned to conduct this survey. The first part of the survey, which involved focussed group discussion in a number of locations in Queensland, was completed in February. A detailed survey of attitudes of 900 randomly selected adults in Queensland and 100 Aboriginal and Torres Strait Islander people is currently under way. A final report is expected in May 1991.

Crime Victims Survey

As part of the effort to improve information on crime, the Commission, in association with the Government Statistician’s Office, has embarked on a large scale crime victims survey in Queensland. This survey will offer valuable information on the nature and amount of crime in Queensland, the risk of victimisation, the direct and indirect cause of crime, attitude towards crime prevention programs and a host of other items of information. Such information will be of great assistance in designing and evaluating community policing and other crime prevention programs. A final report is expected before the end of 1991.

Review of the Queensland Police Service Information Bureau

The Fitzgerald Inquiry considered the quality of information on crime produced by the Queensland Police Service Information Bureau and found that the information produced was not adequate for any useful police or other function. In its report the Fitzgerald Inquiry made recommendations for the Commission to conduct a comprehensive review of the police information systems. Recommendations also emphasised that such a review is to take place in co-operation with specialist external consultants and officers of the Queensland Police Service. The Commission has nominated a Committee consisting of experts and members of the Queensland Police Service and the Commission.

The Commission considers this review to be a co-operative venture and its primary aim is to assist the Queensland Police Service to improve its information capability.

As part of this review process, the Chairman of the Committee and a few members of the Committee have already visited four states to examine the development in Police Information Bureau and other related organisations.
The Committee is to report its findings by 31 October, 1991.

Examination of Police Prosecution Functions

One of the recommendations of the Fitzgerald Inquiry was that action be initiated to remove prosecution and legal advice responsibilities from the Queensland Police Service. It was proposed that, except in remote localities, prosecutions presently handled by Police Prosecutors would become the responsibility of local qualified civilian staff of the Director of Prosecutions. A working party, consisting of representatives from the Attorney General's Department, the Queensland Police Service, the Office of the Minister for Police and Emergency Services, Office of the Director of Prosecutions and the Commission was set up in September 1990. It is chaired by a senior lawyer from the Office of General Counsel. A detailed review is under way and it is planned to submit a report, including a detailed proposal and implementation strategy, to the Cabinet.

Forensic Science Services

A study is under way to assess the current level of resources in Queensland. Various individuals and organisations providing forensic science services to the police and other parties have been approached to express their views with regard to this assessment.

Alternative Sources of Funding

The Commission has begun considering the issue of alternative sources of funding of criminal justice activities with the help of a consultant. A first assessment was made with regard to insurance fraud and the assistance that the Queensland Police Service and the insurance companies could offer each other in solving the problem. A workshop was held in early March and further action emerging out of that workshop is currently being contemplated.

Integrated Criminal Justice Statistics

The Commission is working in association with the Government Statistician's Office and the Queensland Police Service to establish a Committee to examine the development of an integrated statistical system in Queensland. Such a system, which will include all criminal justice agencies in the state, will enable each agency to supplement information on crime and criminals. It will also enable the tracing of suspects from arrest to final disposition and sentencing.

Police Powers

The Fitzgerald Inquiry recommended that the Commission conduct a comprehensive review of all investigative powers available to the Queensland Police Service. Work on this project began in late October 1990. In the meantime the Commission learned that a discussion paper was being prepared by the Office of the Honourable Minister for Police and Emergency Services. A draft paper prepared by the Division is currently being examined.
It should be made clear that police powers is a very complicated issue and other jurisdictions in Australia and overseas have taken years, with a number of qualified staff, to examine the granting or otherwise of powers to the police.

**Domestic Violence**

The Division was approached by a number of bodies to evaluate the operation of the Domestic Violence (Family Protection) Act 1989. The Division has held a number of discussions with the Department of Family Services, the Queensland Police Service and the Magistracy. The project is still in a planning stage and the Commission hopes it will be under way by mid-1991.

**Youth Crime**

A meeting of experts was held at the Commission on 1 March, 1991, to discuss the problem of youth crime and the role of the criminal justice system. A number of proposals emerged and are currently being examined. It has been decided to commission an Issues Paper to an outside consultant which is expected to be completed by late 1991.

**Socio-Economic Profiling of Police Districts**

The Division assisted officers of certain police districts in Queensland in developing socio-economic and demographic profiles of their respective jurisdictions. Other police districts also approached the Chairman of the Commission during his numerous visits to talk to rank and file police officers. As a result of these approaches the Division, along with Professor John Western, is developing a common strategy to assist police officers throughout the state.

**Assistance to Other Agencies**

**Assistance to Royal Commission Into Aboriginal Deaths in Custody**

The Division developed and carried out with the help of the Queensland Police Service and the South Australian Police Service a survey of police attitudes towards Aborigines and Torres Strait Islanders. The data gathered from these surveys are being incorporated in the final report of the Royal Commission into Aboriginal Deaths in Custody. The Division also submitted detailed comments on two major papers prepared by the Royal Commission.

**Assistance to Victims of Crime Association**

The Queensland Victims of Crime Association sought and received assistance from the Division in developing a questionnaire to ascertain the knowledge about victims assistance programs.

**Assistance to Other Institutions**

The Division also assists in delivering lectures at the University of Queensland, Queensland University of Technology and the Queensland Police Academy.
Other Activities

The Division has actively participated in seminars and conferences in Queensland and elsewhere. The Division considers this is a necessary and ancillary aspect of the research and co-ordination function.

In order to obtain views of staff employed in other Divisions of the Commission the Division, in early February 1991, began a series of in-house seminars on topics that were subject of research. So far four such seminars have been held and all were very well attended by staff members and Commissioners.

The Co-ordination Function of the Division

In most of our research activities it is essential that we consult with various Government and other bodies within the state. This is primarily to obviate any duplication of work and at the same time to take into account views and requirements of other Departments in our work. The Division considers it as a major co-ordinating role. The various projects cited above show the involvement of a number of Departments in the Commission's activities, either through direct participation in research or through working parties, liaison committees, etc.

The Police Education Advisory Council, to which I referred earlier, is a useful illustration of the Commission's ability to act as a catalyst, bringing together interested and expert parties into a working group to accomplish a specific task. The Commission's ability to assemble such working groups is a powerful tool for useful and enduring change and it is one that the Commission is determined to use wherever appropriate. Other examples of its use to date are:

- **Domestic Violence** – a working group comprising representatives of this Division, Queensland Police Service, Department of Family Services, the Magistracy and the Premier's Department has been established.

- **Youth Crime** – an expert group has been convened to study the nature and prevalence of youth crime in Queensland. This group includes scholars from the Universities of Queensland and Melbourne, the Australian National University and the Australian Institute of Criminology.

- **Insurance Fraud** – a working group, including representatives of the insurance industry, has been convened to develop strategies for more effective ways of addressing this problem.

- **Review of Queensland Police Service Information Bureau** – the working group includes academics from the University of Queensland and representatives of the Government Statistician's Office, the Queensland Police Service and this Commission.

- **Crime Victims Survey** – the working party includes representatives from the Government Statistician's Office, the Queensland Police Service and this Commission.
Prostitution Law Reform – a working party on organised crime and prostitution includes representatives of the Queensland Police Service and the Commission, and a liaison committee with the Health Department has been established.
INTELLIGENCE DIVISION

The Fitzgerald Inquiry recognised extensive deficiencies in the intelligence area of the then Police Force, especially in regard to its information gathering and analytical capabilities. Extensive recommendations were made for an Intelligence Division to be established within the proposed Commission and also for the Commission to oversee or perform intelligence functions for the Queensland Police Service.

Intelligence is recognised within modern law enforcement as a five phase process commencing with the initial collection of raw data and concluding with the transformation of this data to an end product commonly called finished intelligence. Data collection must always be a focused and defined activity ensuring the most efficient use of resources towards specific goals. Information can be obtained from a variety of sources. The second phase of the process involves the evaluation of the information collected in order to determine the reliability of the source, its accuracy and value. The third phase, collation, enables the removal of non-relevant or incorrect information and the orderly arrangement for storage of the information to ensure that it is retrievable. In this phase relationships between seemingly unconnected entities can be established. The fourth phase involves systematic examination and assessment of data, and the development of precise and valid inferences from which firm conclusions can be drawn. The results are then disseminated as the final phase in the form of oral or written reports.

In day to day operational police work this process can be used in a tactical sense to assist in the neutralising of criminal activities, and arrest and prosecution of offenders. However a more important use of intelligence today is the use of this process to assist in formulating policies and strategies for the prevention of crime and to provide a coherent understanding of criminal organisations and networks.

The Fitzgerald Inquiry found that the then Police Force's capacity to generate and disseminate intelligence was limited and ineffective. It felt that the matter of criminal intelligence and information storage was of central importance in respect of organised crime and recommended that a suitably equipped, professional and specialist criminal intelligence unit, independent of the Police Force, was required to meet the needs of the criminal justice system.

These recommendations were given effect in the Act, with the Division's role noted as:

"the unit within the Commission to function as a professional and specialist criminal intelligence unit providing an effective criminal intelligence service as the hub about which an integrated approach to major crime, in particular:

(a) organised crime;

and

(b) criminal activity transcending the normal boundaries of criminal activity that is the subject of local police action,"
and necessary to accomplish the Intelligence Division's purpose of identifying individuals, groups and organisations known or suspected of being involved in criminal acts."

and

"The Intelligence Division does not maintain information on individuals, groups or organisations unless such information indicates that the individuals, groups, or organisations have been involved, are or were involved, are suspected of being involved, or are in someway connected, with known or suspected criminal activity." \(^{39}\)

The guidelines for intelligence gathering and dissemination also establish specific procedures to ensure the security of information and correct handling, storage and retrieval. This is a significant measure to enhance accountability in a difficult area developed and adopted by the Commission on its own initiative. These guidelines, in a slightly amended format have also been adopted as the basis for operations in this area by the Queensland Police Service Bureau of Criminal Intelligence (BCIQ).

In addition to conducting training for all staff on the content and use of the Intelligence Guidelines, the Division also conducted a two-day seminar on the use of intelligence in police work. This seminar was attended by over 50 officers from both the Commission and the Police Service. The Division is currently finalising the preparations for a three week Intelligence Analysis Training Course which will be conducted between 29 April and 17 May 1991 with attendees from the Commission, Australian Federal Police, Queensland Bureau of Criminal Intelligence, Australian Customs Service, Corrective Services Commission and the Australian Taxation Office.

Section 2.47 (2) (a) of the Act requires the Division to establish a data base of information on criminal activity in its area of responsibility and to apply that information as appropriate to law enforcement operations. An interim computerised database has been established within the Division and additional analytical tools acquired. Consideration is currently being given to the most appropriate hardware and software systems to establish a permanent computer data base with analytical capability. To assist in the identification of the most suitable data base for use by the Division, a small working party has been established to examine data bases currently in use by other agencies with particular emphasis on security and compatibility.

In respect of the dissemination of material, intelligence reports concerning criminal activity and personalities involved in such, have been provided to both the Official Misconduct Division of the Commission and the Queensland Police Service Task Force. However the main effort of the Division has been in a number of major strategic intelligence studies. The Division has provided assistance to the Research and Coordination Division in respect of illegal (SP) bookmaking activities and staff of both Divisions are currently working in concert on an assessment of the involvement of organised crime in prostitution and on a detailed study into illicit drug related topics. Additional strategic studies into specific crime concerns and ethnically based criminal

\(^{39}\) The Commission, Intelligence Division, Guidelines, p.7, emphasis added
activities or concerns are currently under way. These strategic studies are aimed at a broad perspective of traditional organised crime areas where such activity may exist in Queensland.

Such projects, especially those in relation to ethnically based criminal activity, are a sensitive issue. The mere acknowledgment that the study is being conducted has in the past resulted in grossly exaggerated and often speculative reports under prominent headlines in the media. Examples of this have been seen in the latter part of 1990 when the Commission acknowledged it was conducting an examination of the possibility of Queensland being susceptible to Japanese Organised Crime Activity. The Intelligence Division is currently continuing with this examination as well as examinations of similar possibilities in respect of Chinese organised crime and Italian organised crime. Due to the current sensitive nature of these projects they cannot be specifically addressed in the submission, but the results will be made available as appropriate when completed.

As required by Section 2.47 (2) (b) of the Act, the Division has also reviewed all data and records accumulated by the Fitzgerald Inquiry. This material was delivered into the possession and control of the Division by virtue of a request by the Chairman under section 2.48(1) of the Act. The only material not transferred was taxation and telecommunications information. This had been acquired by the Fitzgerald Inquiry by virtue of amendments to the Income Tax Assessment Act, 1936 and the Telecommunications (Interception) Act, 1979. However, this legislation does not allow the material to be passed to the Commission except for the limited purpose of the continuation of the work of the Fitzgerald Inquiry. As stated in the section of this submission concerning the Office of General Counsel, legislative amendment is being sought. All intelligence data and records have been retained and secured by the Division. The balance has been transferred into the possession and control of the Information Manager in accordance with the Chairman's direction.

The Division was also given the responsibility of vetting all staff of the Commission to a high standard, including the provision by staff members of Declarations of Personal Particulars and Financial Interests. The initial vetting procedures were completed and an ongoing program now exists for all new staff joining the Commission. Staff are also required to notify any significant changes in their status under these declarations. With the need to monitor high standards of security not only in respect of the Commission staff but also for the physical security of the Commission, the Division also prepared detailed proposals for the Commission's Security Guidelines.

Both the Fitzgerald Inquiry and the Act left the Commission with a degree of discretion as to how to perform its responsibilities of overseeing the performance of the intelligence function within the Queensland Police Service. To date, the Commission has chosen the course of seeking to upgrade the police Bureau of Criminal Intelligence rather than the alternative of assuming all responsibility for the area itself.

In addition to the preparation of Guidelines, a detailed assessment of the BCIQ was conducted and a report prepared recommending significant changes to the Bureau's structure, procedures and relations with other sectors of the police service. This report was accepted in its entirety by the police service and is now in the process of being implemented. This implementation process is being monitored by the Commission.
Additionally the Division has been involved in close liaison with BCIQ officers in connection with the preparation of target proposals and the various strategic studies currently under way.

The Division also has responsibility for monitoring the relationship between the Queensland Police Service and the Australian Security Intelligence organisation (ASIO). A recent report indicates that the Commonwealth authorities are well pleased with the way that relationship is now functioning.

Reference was made earlier to the old Special Branch. Under Commonwealth guidance, following the abolition of that unit, a Counter-Terrorism Section has been established by the Police Service, and it is monitored by the Commission. The Commission is satisfied that its functions are being correctly carried out. It has recently been the subject of commendation by the Commonwealth authorities for its work in the recent Gulf crisis. The Commission was pleased to contribute to this work.

The Counter Terrorism Section operates under a specific Charter which, among other things, provides for a target control committee which approves all targeting by the Section. This committee consists of the Commissioner of Police, the Chairman of the Commission and the Assistant Commissioner Task Force.

The target selection is a strictly controlled function which was made public in a joint statement by the Chairman of the Commission and the Commissioner of Police in July 1990 at the same time as the Intelligence Guidelines were released publicly. This selection must relate to targets who show:

- a proved or believed involvement in, or the planning of, crime related to terrorism and/or violence;
- a history of terrorism or a propensity to violence beyond mere parading, picketing and vocal complaint;
- a past, present and/or future criminal impact of a terrorist or violent nature on the citizens of Queensland and/or Australia.

The Charter also provides for the collection and storage of intelligence and this was subject to an audit conducted in late 1990 by this Division. The audit found that the Section was operating within its Charter. As part of the ongoing review of the BCIQ, the activities of this Section will continue to be monitored and further audits will be conducted from time to time.

As part of the overall review and improvement of intelligence and information storage capabilities, the Division is represented on the Steering Group for the development of a Queensland Intelligence Data Base and also on the working party engaged in a review of the Information Bureau of the Queensland Police Service.
SECRETARIAT

Given the Commission’s responsibilities in investigating official misconduct by other units of public administration, it is crucial that the Commission itself pays close attention to its mechanisms of internal and external accountability.

The Commission takes the view that it should itself be a model organisation, particularly having regard to its education and corruption prevention role.

The major responsibility for the establishment of internal accountability mechanisms within the Commission is assigned to the Secretariat (known within the Commission as the Corporate Services Division), established under Section 2.12(2)(a) of the Act.

The Division is responsible to the Commission through the Executive Director and, as its title suggests, supports the operational functions of the Commission and performs all personnel, administration, information and financial management functions.

The requirement for optimum accountability is paramount in the provision of all the Division’s services. With the establishment of the Commission, a number of staff in the Fitzgerald Inquiry secretariat were seconded public servants who elected to return to their home departments. This placed considerable importance on the recruitment of appropriately qualified staff to form the nucleus of the newly established Corporate Services Division.

As at June 1990, only 11 administration staff remained from those who were with the Fitzgerald Inquiry secretariat leaving all key positions in the Management Resources Branch, comprising Financial Services, Personnel Services and Administrative Services Sections, vacant. Over the ensuing two months a heavy recruiting process was undertaken to select staff who possessed the relevant necessary expertise.

When reviewing the systems currently in place, it is evident a number of significant initiatives have been implemented. Some of these include:

Financial Services

The Financial Services Section has developed an autonomous payroll system, replacing the previous system established for the Fitzgerald Inquiry and managed by the Department of Justice and Corrective Services.

The Section has also implemented a computerised financial accounting package covering all requirements in accordance with the Financial Administration and Audit Act 1977–1988.

Further to and consequent on the above, a comprehensive system of computer generated internal management reports for the Executive (Chairman and Divisional Directors) has been developed. The reports are produced during the first week of each month, highlighting all expenditure for the previous month and giving year to date totals. These reports are used to assist Directors and the Chairman monitor and manage expenditure in relation to Budget. Expenditure is reported by program and activity level.
Administrative Services

A Register of Assets has been established for the Commission. To date approximately two thousand assets including many of those used during the Fitzgerald Inquiry have been located, identified and marked with barcode identification and transferred to a computerised retrieval and control system.

Commission staff have developed a Vehicle Management System which is in an advanced stage of implementation. This computerised system, to monitor and control the Commission's fleet, will replace the existing manual motor vehicle records system and ensure greater efficiency and accountability in the use of vehicles by the Commission. Extensive inquiries during the Commission's establishment phase were unable to find any similar systems in existence in the public sector and accordingly the Commission's initiative may form a model for other organisations.

A comprehensive computerised Stock Control Management System is also in the final stages of development and will be used to monitor usage and re-ordering of stocked items. Once again, this initiative emanated from Commission staff.

A formalised requisition system and computerised purchase order procedure has also been established to operate in accordance with all relevant Public Finance Standards.

Personnel Services

The Commission is committed to the efficient utilisation of its human resources and the professional development and training of its officers. This is the responsibility of the Personnel Services Section which continues extensive development work in the following areas:

1. Ensuring recruitment and selection procedures meet standards issued by the Public Sector Management Commission.

2. Implementation of a computerised leave management system.

3. Formalising the staff establishment by way of Position Description Forms identifying major duties, qualifications and experience for all positions within the Commission.

4. Developing appropriate salary ranges based on public sector relativities or comparison with related and similar agencies.

5. Reviewing the Commission's organisational structure with reference to staffing needs, career paths and related considerations.

6. Establishing the most appropriate and comprehensive personnel records.

7. Development of a performance review and planning system in conjunction with the Public Sector Management Commission and the Premier's Department.
Development and issue of personnel policy guidelines on matters such as staff counselling and discipline, training and staff development and related matters in order to apply employment conditions commensurate with the public sector generally.

Information Management

The development of a Computing Strategic Plan to identify needs and priorities for an integrated approach to information management and processing was an early priority of the Information Management Branch. A Computer Steering Committee has been established, under the Chairmanship of Commissioner Kelly, the membership of which comprises Divisional Directors and General Counsel. The Manager, Information Management Branch acts as Secretary to the Committee.

The Charter of the Committee is:

To ensure that the most effective use of Information Technology is attained within the Commission by:

- Recommending an annual Strategic Computing Plan;
- Setting and reviewing priorities for Projects to be undertaken;
- Considering proposals for new Projects;
- Monitoring the progress of Projects being undertaken against agreed Schedules;
- Monitoring expenditure on Information Technology against budget allocation.

Records systems for the information holdings of both the Commission and the Fitzgerald Inquiry have also been developed and are supported by computer software for file/document/item tracking.

The ongoing development of information security, registration, recording and retrieval systems within the Commission is a priority. This is a continuing concern given the sensitive nature of much of the information received and held by the Commission.

Also, the development of systems to provide secure and accountable facilities for property and material acquired by the Commission during the course of its operations and to facilitate accurate recording mechanisms for public reporting is continuing. In this regard, computer staff have been heavily involved in the development of software in accordance with user requirements as specified by the various operational units.

Role of Executive Director

The role of the Executive Director, as enunciated in the Fitzgerald Report,\(^4\) incorporates four main areas of responsibility within the Commission:

\(^4\) The Fitzgerald Report, p.321
(a) the development and maintenance of administrative and support systems to ensure the required quality of service delivered is maintained;

(b) to develop recommendations regarding organisation, staffing and overall budget requirements;

(c) to assist the Chairman and Directors to co-ordinate the activities of the various Divisions thus ensuring a unified approach to the tasks undertaken by the Commission; and

(d) assist the Chairman and part-time Commissioners with the conduct of Commission business.

As the Commission approaches its full operational strength, greater emphasis is being placed on the need for overall co-ordination as indicated in (c) above. One mechanism in place to assist in this regard is the weekly meeting of the Executive Management group (comprising the Chairman, General Counsel and Divisional Directors) to address such matters.

A key aspect of this co-ordination role is to establish and maintain a network of computing, financial and administrative systems necessary to provide adequate logistical support to the operational divisions of the Commission. This necessitates the co-ordinating and directing of appropriate resources to meet Commission priorities.

More recently, the Executive Director has begun attending the monthly meetings between the Parliamentary Criminal Justice Committee and the Commission to facilitate a consistent and regular flow of information between these two bodies.

**Operational Audit and Management Support**

In August 1990, an Operational Audit and Management Support function was established in accordance with the Part 6 Division 1 of the Public Finance Standards. Having a dual role, the function reports directly to the Chairman, as Chief Executive Officer, in respect of operational audit matters and to the Executive Director in relation to management support matters.

Operational Audit involves conducting operational audits of the Commission's accounting systems, management information systems and administrative procedures. The principal objective of these reviews is to evaluate the efficiency of the delivery systems and formulate recommendations which will assist the Commission achieve its policy objectives, and the ongoing enhancement of its systems.

The Management Support function involves the provision of specialist administrative expertise to line managers so that they may fulfil their legislative management and developmental responsibilities.
Corporate Plan

In November 1990 the Commission published its first Corporate Plan in accordance with Part 3 Division 1 of the Public Finance Standards.

This document provides the public with a window into the operations of the Commission. Through this Plan, the Commissioners and line managers can accurately and quantitatively respond to the demands for openness and accountability in the post Fitzgerald era.

Preparations for a revised Corporate Plan for 1991–1996, and a Strategic Plan for 1991/92 are proceeding. The revised Corporate Plan will identify the principal goals and strategies for the next five years, and the Strategic Plan will describe the objectives, strategies and performance measures for each function within the Commission. Each functional objective shall be linked to the corporate goals of the Commission.
OFFICE OF GENERAL COUNSEL

The Office of General Counsel derives not from any provision of the Act but from the Commission's need for a permanent senior legal adviser. The Office has an independent role within the Commission and is not part of any organisational unit. It provides advice on request of the Chairman and the organisational units and has a particular role in respect of the Misconduct Tribunals. The more important functions in respect of the Commission are to:

- Advise the Commission, and where appropriate, other agencies, on more complex legal and policy issues;

- Represent the Commission in legal proceedings to which it is a party;

- Assist the Commission in its more significant or difficult hearings;

- Constitute the Commission for the purpose of conducting some of its hearings in the discharge its functions;

- Settle more important briefs of evidence before they are furnished to prosecution authorities or principal officers of units of public administration;

- Advise on the need for amendment to the Act and other legislation pertinent to the administration of criminal justice;

- Co-ordinate and prepare responses to issues papers and draft legislation pertinent to the administration of criminal justice;

- Oversee procedural matters in respect of the Misconduct Tribunals;

- Provide a focal point for liaison with the Office of the Special Prosecutor (OSP) and other agencies with particular reference to the dissemination of information;

- Represent the Commission on working parties and committees concerned with the administration of criminal justice; and

- Deliver public addresses on behalf of the Commission.

The Office also plays a role in advising on whether the Commission should conduct investigations in respect of certain information and complaints coming to its attention.

A number of particular initiatives of the Office of General Counsel are discussed below:

Staffing

Because of the extent of these functions, the office has evolved to six personnel. In addition to General Counsel there are three other barristers. The remaining staff are an executive secretary and 1 support officer. Two of the barristers have been attracted from the private bar.
Secondment of Barrister to Assist Police Service

In February, one of the office lawyers was assigned to work with the Queensland Police Service for six months to assist in implementing new disciplinary procedures. He is assisting the Police Service streamline the disciplinary process and develop procedures and forms. The intention is to ensure that only those matters which are relevant to the decision are taken into account and natural justice is given to all members of the police service in disciplinary proceedings. Further, it is intended to facilitate the conduct of any application to the Commissioner for Police Service Reviews or appeal to the Misconduct Tribunals or Supreme Court in respect of any such decision. This is a Commission initiative which has highlighted the need for a permanent independent legal adviser to the Police Service.

Legal Advice

The Office has been required to advise on a wide range of issues including administrative, industrial and criminal law. It has also carried out significant drafting responsibilities in respect of contracts and forms required for use by the Commission. It has advised on in excess of 150 matters.

Some of the more significant documents it has drafted are:

- **Contracts of Employment**

  These are in accordance with the Premier's approval that public service award conditions form the basis of all conditions and entitlements. They also give effect to the Cabinet decision on the superannuation entitlements of Commission Staff.

- **Declarations of Personal Particulars and Private Interests and Associations**

  - Register of Pecuniary Interests and Record of Personal and Political Associations;
  - Undertaking of confidentiality.

Some of the other matters in which advice has been given are referred to in the following paragraphs.

**Court Appearances**

The Office has been involved in significant legal proceedings concerning the Commission.

Reference will subsequently be made to The Queen —v— Criminal Justice Commission, Ex Parte Alansworth Nominees Pty. Limited and Alansworth [OSC No. 28 of 1990] in which General counsel was junior to Mr. O'Regan Q.C.

The recent appearance by the Commission in Thless —v— TCN Channel Nine Pty. Ltd. and Woodham [No. 4150 of 1989] is instructive.
This concerned subpoenas served on the Commission to produce to the Supreme Court, information obtained by it in the exercise of its investigative powers.

In response, the Commission produced 21 boxes of information to the Court. It objected to producing other documents on the basis of public interest immunity, i.e. people would not assist the Commission if their confidentiality could not be assured.

Mr. Justice Williams ruled that information obtained by the Commission in the exercise of its investigative powers came within the scope of this doctrine.

The whole process involved the equivalent of 21 days work by Commission staff.

This exercise demonstrated how time consuming it will be in the future for the Commission to respond to subpoenas duces tecum. It is anticipated that this will be the first of many subpoenas which will be served upon the Commission for the production of documents believed to be in its possession in actions to which it is not a party.

Indeed recently two subpoenas was served on the Commission in one week.

Subpoenas are usually served with little or no notice and divert resources from other work.

Commission Hearings

The office has drafted procedures as to the form which Commission hearings should take.

Its lawyers also appear to assist at Commission hearings. Forms of appointment have been prepared for this purpose as another element in ensuring accountability.

As well as the Chairman, the Director of the Official Misconduct Division, General Counsel and the Chief Officer of the Complaints Section have presided at Commission hearings.

Legislative Amendment

The Office of General Counsel has responded to (often at extremely short notice) requests for advice on the form of legislation or recommended legislative amendments including:

Police Complaints Tribunal Act

Advice provided on means to effect repeal of Police Complaints Tribunal Act and ensure passage of records to Complaints Section of Official Misconduct Division of Commission.

Police Service Administration Act 1990 and Regulations

A number of amendments were suggested and incorporated into the Act and Regulations.
The Members (EARC and CJC) Act 1990

At the suggestion of the Commission, this legislation which was assented to on 21 March 1990, amended those portions of the Electoral and Administrative Review Commission Act 1989 and the Criminal Justice Act which prevented the holders of appointments to educational institutions being eligible for appointment to the position of Commissioner.

Whistleblowers (Interim Protection) and Miscellaneous Amendments Acts 1990

This legislation was proclaimed on 2 November 1990. It, inter alia, amended the Act to:

. provide interim protection for "whistleblowers", pending the detailed research project and report from the Electoral and Administrative Review Commission (EARC),

and

. enable Commission reports to be provided to the Government Printer in advance of their being furnished to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Minister, as required by Section 2.18(1) of the Act.

The legislation also contained an amendment requested by the Commission to Section 2.32 by the insertion of a new subsection (1A) to ensure that persons are not disqualified from appointment to the panel of Tribunal members because they hold an appointment in an educational institution. As a consequence it has now been possible to appoint an experienced law lecturer to the panel of members of the Misconduct Tribunals.

Consultation was had with the Premier's Department and Parliamentary Counsel in relation to these proposed amendments. Through this process, the Commission which agreed with the philosophy of the draft legislation, had the opportunity for input into its content and form. A number of revised drafts were submitted to it and commented on by the Office of General Counsel. A number of amendments were suggested and incorporated into the legislation which was proclaimed.

Evidence Act

On request, the Commission commented on two proposed sections of the Evidence Act. These concerned the rejection of confessional evidence which has not been recorded and simplifying the third party discovery of public sector documents. The Commission understands that the Attorney-General has accepted the thrust of these submissions.

Health Act

The Commission recommended to the Health Minister that the ownership of medical centres should be subject to the grant of a licence by the Health Department. This regime
would enable vetting of all future applicants for ownership of medical centres, to
determine their suitability to have a financial interest in one.

This would place the ownership of medical centres on the same basis as pharmacies.

**Cash Transaction Reports Act 1988 (C’wth)**

At the request of the Commission through the Premier, the Federal Government supported
an amendment to Cash Transaction Reports Act to give the Commission access to such
information as is authorised by the Director of the Cash Transaction Reports Agency.

The criminal intelligence able to be provided by the Agency will greatly enhance the
Commission’s investigations in such areas as police and public sector corruption and major
and organised crime.

There will be safeguards attached by the Agency to the provision of any such information.
Firstly, by the Commission agreeing only to use such information for the objectives of the
Cash Transaction Reports Act 1988 and secondly, by logging access to all such
information.

**Telecommunications (Interception) Act 1979 (C’wth) and Income Tax Assessment
Act 1936**

During the course of the Fitzgerald Inquiry, amendments were made to the
abovementioned Federal legislation to enable certain information to be passed to the
Inquiry. Access to such information was valuable to it. There is no doubt that it would
be of similar value to the Commission in its investigations of corruption and organised
criminal activity.

However, the Commission has no similar authority to receive information from Telecom,
the Commissioner of Taxation or the Fitzgerald Inquiry.

It has asked the Premier to seek amendment of this legislation to put it in the same
position as the Fitzgerald Inquiry. It is understood that this is under consideration.

It is emphasised that the amendment sought to the *Telecommunications (Interception Act)*
is to enable the Commission to obtain what is known as call charge record information –
the existence of a communication, the date, time and duration of the call and the identity
of the services involved. It would not include the contents of the conversation.

**Draft Bill to Provide for Regulation and Control of Gaming Machines and for
Purposes Connected Therewith**

General Counsel provided advice to the Chairman as to the form and content of original
and later drafts of this proposed legislation.
Proposed Local Authority Enterprise Legislation

State Cabinet has authorised the preparation of legislation dealing with enterprise activities of Local Authorities (allowing commercial or joint ventures). The Director of Local Government accepted the Chairman's offer to assist by providing comment on the draft legislation by welcoming that input at the preliminary drafting stage.

The Commission has been advised by Parliamentary Counsel that the proposal has been resubmitted to the Local Government Department for further development. It has written to the Director with comments on the original proposal with a view to assisting in this process. It has again advised that it is prepared to comment on the draft legislation.

The Draft Stipendiary Magistrates Bill

The Commission supports this Bill aimed at assuring the independence of the Magistracy. It has made suggestions with the intent of enhancing this.

Comment on Issues Papers

The Commission is frequently requested to provide comment on issues papers and proposed legislative changes relating to the administration of criminal justice. These have included:

- The EARC Issues Paper on Freedom of Information Legislation

and

- EARC Issues Paper and Draft Bill on Judicial Review of Administrative Action

The Commission supported such legislation. Contrary to some reports it did not seek a blanket exemption from its application. It suggested that it should contain a carefully drafted provision to enable each request to be considered on an individual basis. It was considered that this will be sufficient to protect the confidentiality of information received in its investigations.

PSMC Issues Paper on Appeal Rights in Queensland Public Sector Employment

The Commission has agreed with the tenor of the recommendations. However it has strongly recommended that the Queensland Police Service be exempted from any appeal mechanism established for the public sector. It suggested that there are good reasons why the Misconduct Tribunals and Commissioner for Police Service Reviews should continue to have exclusive jurisdiction in respect of this Service.

EARC Issues Paper on Public Sector Auditing in Queensland

The Commission made recommendations to enhance the independence and reporting functions of the Auditor-General. These included the appointment of the Auditor-General by consultation with a Parliamentary Committee, his constitution as an independent
authority and the presentation of open, frequent and fearless detailed reports to Parliament. These reports would bring any errors and improprieties discovered to the Parliament's attention.

In addition to responding to this paper the Commission provided two of its officers (a Financial Analyst and a Lawyer) to advise EARC of specific internal auditing problems identified by the Fitzgerald Inquiry and the Commission in the course of their investigations into the public sector. This was to assist EARC in the preparation of this paper.

**EARC Issues Paper on Whistleblower Protection**

The Commission has submitted that Whistleblower Protection should be the subject of a unified code of legislation and that it is the appropriate body to administer it.

It emphasised that contrary to a recent report, the Commission has not called for extra powers for this purpose. It has simply suggested that it would be counter productive to establish another body to do this. The Commission will have contact with most of the people that will require protection. It would use its existing statutory powers in support of the legislation.

**Government Response to the Parliamentary Joint Committee Review of the National Crime Authority**

The Commission provided a submission to the Premier's Department to assist it in any response it may consider appropriate to make in respect of this review.

**CONCLUSION**

The Commission has recommended legislative change and commented on issues papers and proposed legislative amendment concerning the administration of criminal justice in 22 cases.

**Working Parties/Review Committees**

Staff of the Office of General Counsel represent the Commission on the following review committees and working parties:

- The Criminal Code Review Committee which has recently released an interim report. The Attorney-General has suggested that the redrafted code could form the basis of a uniform national criminal law;
- The Police Prosecutions Functions Working Party (referred to in the section on the Research and Co-Ordination Division);
- The Queensland Corrective Services Legislation Review Committee.
Forms and Procedures

The Commission inherited a set of forms, procedures and guidelines from the Fitzgerald Inquiry. These have provided an excellent starting point to the development of forms and procedures relevant to the objects, functions, responsibilities and powers of the Commission. In addition, a close liaison with other agencies (in particular the ICAC, NSW Crime Commission and NCA) has materially assisted the Commission in the development of its own forms and procedures.

The Office of General Counsel has developed forms and supporting documents for the exercise of the Commission's statutory powers:

- Notices to produce records and information (Section 3.1 of the Act);
- Notice of Summons (Section 3.6 of the Act);
- Authority to Enter Public Premises (Section 3.2 of the Act);
- Search Warrants (Section 3.3 of the Act);
- Attendance of prisoners before the Commission (Section 3.13 of the Act).

Comprehensive explanatory notes have also been issued to staff in respect of the Notices under Section 3.1 and the Notices of Summons under Section 3.6 of the Act. No such process is issued in the exercise of the statutory powers of the Commission unless the supporting documentation is completed setting out the reasons for doing so and these reasons are accepted by the Chairman (or if he is absent and the exigencies of the situation require, the Director of the Official Misconduct Division). The Commission has initiated this to ensure accountability in the exercise of these powers through the existence of a permanent record of any such decision. For similar reasons permanent records have been created of decisions to disseminate information. In addition, these forms and supporting documents are being continually reviewed and updated in light of experience.

In addition, the Office of General Counsel has developed:

- procedures to be followed in making an application to the Supreme Court under Section 3.14 for the use of listening devices;
- documents/exhibit handling procedures;

and

- the basis of an operational procedures manual, including all procedures and guidelines that have been issued during the life of the Commission.
Liaison with Other Agencies

(a) Office of the Special Prosecutor

General Counsel has remained the focal point of liaison with the Office of the Special Prosecutor in respect of prosecutions arising from the Fitzgerald Inquiry.

(b) Other Agencies

- Director of Prosecutions (Qld)

Full and frank discussions have been had with the Director of Prosecutions about issues of mutual interest.

The Commission has adopted the Director's requirements as to the principles applying when considering whether to give a potential witness an opportunity to seek an indemnity and the form of application which should be made through the Director to the Attorney-General.

- South Australian Anti Corruption Authority

The South Australian Anti Corruption Authority advised that as the result of a meeting with the Commission, it had introduced a number of new ideas.

- Liaison with Units of Public Administration

Liaison meetings have been held with Principal Officers of units of public administration (in addition to the Queensland Police Service) as to their obligations under the Act and their interaction with the Commission.

- Memoranda of Understanding

On 9 April, 1991 a Memorandum of Understanding was entered into for joint operations and exchange of information between the Commission and the SDCC.

A Memorandum of Understanding has been entered into for exchange of intelligence information between the Commission and the ABCI.
MISCONDUCT TRIBUNALS

The Fitzgerald Report recommended the establishment of Misconduct Tribunals to "review decisions on disciplinary matters within the Police Force, 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." 41

The Misconduct Tribunals are independent of the Queensland Police Service and other units of public administration and are an organisational unit within the Commission. 42 Its members must hold office in no unit of public administration (other than an office held ex officio) or in the Commission. 43 An educational institution is not a unit of public administration for this purpose. 44 Each tribunal is constituted by one member nominated by the Chairman. 45 Such members may, in an appropriate case, sit with advisers (not exceeding two) possessing expertise or qualification relevant to that case. 46

The Tribunals have original and appellate jurisdiction - original jurisdiction to investigate and determine every charge of a disciplinary nature of "official misconduct" made against a "prescribed person" 47 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". 48

"Prescribed person" for the purpose of the exercise of both the original and appellate jurisdictions of the Misconduct Tribunals is defined as:

(a) a member of the Police Force;

(b) a person who holds an appointment in a unit of public administration (other than the Police Force), which appointment or unit is for the time being declared by Order-in-Council to be subject to the jurisdiction of a Misconduct Tribunal. 49

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41 ibid, p.315.
42 The Act, s.2.12(1)
43 ibid, s.2.32(1)(a)
44 ibid, s.2.32(1A) which was inserted at the Commission's request by the Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1990 No. 79 of 1990 (assented to on 2 November, 1990)
45 ibid, s.2.35(1)(a)
46 ibid, s.2.35(2)
47 ibid, s.2.36(1)(a)
48 ibid, s.2.36(2)
49 ibid, s.2.36(3)
It follows that the Act only prescribe one class of person to be subject to the Misconduct Tribunals, namely members of the Queensland Police Force (now known as the Queensland Police Service). Other such persons must be declared by Order-in-Council. To date no other persons have been so declared. Prescribed persons are entitled to legal representation in both jurisdictions.

A Registrar was appointed on 30 April, 1990. The Office of Registrar is not statutorily recognised. However, for reasons connected with the independence (and perceived independence) of the Tribunals and their practical administration, the Commission recommends amendments to the Act, including the creating of this Office.

In August, 1990 seven persons, including two retired Supreme Court Judges, were appointed to the inaugural panel of Misconduct Tribunals. In consultation with the Tribunal members, the Registrar of the Tribunals and General Counsel of the Commission drafted rules to govern the practice and procedure (including forms and notices to be used by parties) of the Tribunals. Copies were supplied to the firm of solicitors retained to represent members of the Queensland Police Service and the Police Union. The firm expressed appreciation and advised that the rules provide a proper basis for the disposal of matters before the Tribunals. No request has been made for the Governor-in-Council to make these regulations pursuant to Section 7.11(b) and (c) of the Act. This is to enable them to be developed in light of experience. To date the Tribunals have adopted these rules for purposes of regulating their proceedings pursuant to Section 2.43(1) of the Act which empowers a Tribunal to "inform itself on any matter and conduct its proceedings as it thinks proper". The present rules are annexed. (Annexure 3.) The revision of these rules is currently under consideration.

The Misconduct Tribunals (the Tribunals) are established under Part II, Divisions 5 and 5A of the Act. Section 2.31 of the Act constitutes the Tribunals as part of the Official Misconduct Division. This provision does not appear internally consistent with Section 2.12 of the Act which establishes the additional organisational units within the Commission, under which the Tribunals would appear to be established as a separate organisational unit. As the Commission stated at page 29 of its first annual report, it has great difficulty with the concept of the Tribunals being established as part of the Official Misconduct Division under the control of its Director, as this arrangement appears to be contrary to legal principle.

The concern is that the investigative unit, which is the Official Misconduct Division, should superintend in any way the functioning of the administrative unit responsible, inter alia, for adjudicating upon investigations undertaken by that Division. Further, the legislative arrangement would appear to be contrary to the recommendation of the Fitzgerald Inquiry that the Misconduct Tribunals "must be demonstrably independent of government agencies and the police".50

The seven foundation members of the Tribunal shared this view. They have stressed to the Commission their concern that their independence (and perceived independence) be ensured by the amendment of Section 2.31 of the Act to remove them from their current status as part of the Official Misconduct Division.

50 The Fitzgerald Report, p.315
One of those members has, in fact, advised that while the legislation remains in its present form, he would not be comfortable about constituting a Misconduct Tribunal for the purpose of exercising its original jurisdiction. In addition, he perceives difficulties as to constituting such a Tribunal in its appellate jurisdiction where the Official Misconduct Division has been involved in the investigation which is the subject of the appeal.

Because of these concerns, the Director of the Official Misconduct Division willingly surrendered any active day to day involvement in respect of the operation of the Tribunals.

A Misconduct Tribunal is authorised to conduct hearings for the purpose of exercising its jurisdiction and to receive evidence on oath or affirmation, or by way of statutory declaration. Such hearings shall be open to the public.

The Tribunal's original jurisdiction is exclusive. In exercising this jurisdiction one or more of the following sanctions may be ordered:

(a) dismissal of the prescribed person;
(b) reduction in rank or in level of salary of the prescribed person;
(c) forfeiture or deferment of a salary increment or increase to which the prescribed person would ordinarily be entitled;
(d) deduction from the prescribed person's periodic salary payment of an amount not exceeding $100 per payment to an aggregate sum determined by the Tribunal;
(e) deduction from the prescribed person's monetary entitlements upon termination of his service (other than entitlements by way of superannuation) of a sum determined by the Tribunal.

A person aggrieved by a decision of a Misconduct Tribunal exercising original jurisdiction may appeal to a Supreme Court Judge on the grounds of:

(a) denial of natural justice;
(b) error of law;
(c) manifest excessiveness of penalty.

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51 The Act, s.2.43(2)
52 ibid. s.2.43(3)
53 ibid, s.2.37
54 ibid, s.2.44(1)
55 ibid, s.2.38(1)
While the appellate jurisdiction is not exclusive, decisions are final and conclusive.\textsuperscript{56} In exercising this jurisdiction a Tribunal is required to inform itself of the facts and determine the issue afresh.\textsuperscript{57} In the exercise of this jurisdiction, a Tribunal may, by its order:

(a) affirm the decision reviewed;

(b) quash the decision reviewed;

(c) vary the decision reviewed in such manner as the Tribunal considers just;

or

(d) quash the decision reviewed and substitute such decision as the Tribunal considers should have been made at first instance.\textsuperscript{58}

In proceedings initiated in either of its jurisdictions, a Misconduct Tribunal may remit any matter to the Director of the Official Misconduct Division for the making of investigations, or further investigations, with a view to the taking of criminal proceedings, or for any other purpose, and may adjourn its proceedings until those investigations are completed.\textsuperscript{59}

The first hearing in the Tribunals – in the appellate jurisdiction – was held on 28 November, 1990 and by judgment delivered on 3 December, 1990, the Tribunal member, Mr Chesterman Q.C. affirmed the decision of the Commissioner to dismiss the appellant from the Police Service. In this case, Mr. Chesterman Q.C. expressed his opinion as to the approach to be adopted on an appeal against a disciplinary sanction. This is annexed. (Annexure 4.)

To date the appellate jurisdiction the Tribunals have disposed of two appeals, another is set down for hearing on 8 May, 1991 and two others have been adjourned to a date to be fixed to enable the solicitors acting for the appellants to obtain further instructions. Another appeal will be assigned to a member for hearing as soon as proceedings in the Magistrates Court relating to criminal charges have been dealt with. A further appeal relating to the dismissal of the appellant from the Police Service is awaiting the outcome of a writ of certiorari before the Full Court challenging the power of the Commissioner to dismiss him. A schedule of appeals lodged is set out below.

It has been the firm view of the Commission that the appeals by way of re-hearing have an appellant and respondent (namely the officer of the Queensland Police Service whose decision is subject to appeal) in the traditional sense. An Inspector of the Queensland Police Service has been allocated to appear on behalf of the respondent in such

\textsuperscript{56} ibid, s.2.39(3)

\textsuperscript{57} ibid, s.2.39(2)

\textsuperscript{58} ibid, s.2.44(3)

\textsuperscript{59} ibid, s.2.44(4)
proceedings. The establishment of a permanent position of an independent legal adviser to the Queensland Police Service would enable the appointee to represent the Service in at least the more important of these appeals. This is referred to in the section of the submission concerning the Officer of General Counsel.

One member has now been nominated by the Chairman to hear and determine the first matter in the original jurisdiction. A number of directions hearings have been held and the matter has now been set down for hearing commencing on 20 May, 1991. This matter involves six charges of official misconduct and fifteen days have been set aside.

For the purpose of this proceeding a submission was prepared by Counsel assisting (a barrister from the Office of General Counsel) as to the procedures and standard of proof applicable in such proceedings.

A barrister of the Office of General Counsel will continue to assist the Tribunals in the exercise of their original jurisdiction. This assistance will be provided in the traditional sense of counsel assisting an investigative body such as a Commission of Inquiry.

This office will consider all briefs of evidence before a decision is made to require the Principal Office of a unit of public administration to charge a person with official misconduct.

In addition to the matter listed for hearing there are presently three other matters involving six police officers which have been the subject of reports by the Director of the Official Misconduct Division under Section 2.30(1) of the Act requiring the Commissioner to charge a member of the Service with official misconduct by way of a disciplinary charge, and have him dealt with by a Misconduct Tribunal.

In order to emphasise the independence of the Tribunals the Registrar and the hearing rooms are housed in premises separate from the Commission. The evidence is recorded by employees of the Commonwealth Reporting Service. A schedule of matters initiated in the original jurisdiction is set out below.

It became apparent early this year that further Tribunal members were needed.

For a variety of reasons, only two of the original members were available to constitute the Tribunals. These included the appointment of Ms. McMurdo as a Judge and of Mr. Chesterman Q.C. to assist the present Tasmanian Commission of Inquiry.

As the majority of members will always be experienced and busy lawyers, it is desirable to have a sufficiently large panel upon whom to call to give flexibility in assigning matters.

For these reasons the Commission nominated further persons to the Premier for appointment. On 14 March 1991 the Governor-in-Council appointed a further seven persons to the panel of the members of the Misconduct Tribunals. These included two Queen's Counsels and a highly respected law lecturer.
As the Misconduct Tribunals are a unique body and are breaking new ground it has taken some time to have them fully operational. Concern has been expressed that the Tribunals may become "too legalistic" and mirror the procedure of a Court. While this would be a matter of considerable concern to the Commission it is too early to make such an assessment. However, the powers granted to a Tribunal in the conduct of its proceedings are clearly set out in Section 2.43(1) of the Act:

"A Misconduct Tribunal is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the exercise of its jurisdiction, but may inform itself on any matter and conduct its proceedings as it thinks proper."

Associated with this matter is an aspect which previously may not have received much consideration. This relates to the costs involved in operating the Tribunals. These costs may include accommodation, attendance and travelling allowances. Also a great deal of photocopying is likely to be involved in providing the person charged (or his or her solicitor) with copies of various documents relevant to the charge. In some cases this could be substantial. All these matters have a real potential to impose a considerable burden both in time and resources on the Commission.

The costs of operating the Tribunals are now becoming apparent. Fifteen days have been allocated to the first hearing in the original jurisdiction. It is estimated that the cost will be in excess of $38,000. This included accommodation, attendance and travelling allowances to witnesses, recording and transcribing evidence and the members' and orderlies' fees.

This figure does not include the very considerable amount of time counsel assisting has spent in preparation for the hearing and other appearances. The cost of photocopying material (including on behalf of the respondent) is also not included. A substantial amount of photocopying is involved.

Present indications are that the preparation and presentation of matters in the original jurisdiction will be a full-time job and as the number of such matters increase, it will require more than one lawyer to attend to them.

Accordingly, there is a real potential to impose a considerable burden both in time and resources on the Commission.

Legislative Amendment

As stated the concern is that the investigative unit (the Division) should be seen to superintend in any way the functioning of the unit (the Tribunals) which is responsible for adjudicating upon investigations undertaken by it.

While this is not, in fact, the case and the Tribunals have demonstrated themselves to be manifestly independent, the concern is that because of the Act, someone may think otherwise.
The Commission shares these concerns. It has gone to great lengths to ensure that they are "demonstrably" independent. The Director of the Official Misconduct Division ceased to have any active day to day involvement with the Tribunals before the first hearing.

It was for this reason that the role of establishing an infrastructure and procedures and forms to facilitate the operation of the Tribunals has been assumed by General Counsel in conjunction with the Registrar. However, the Director remains obliged to fulfil his procedural obligations under the Act.

It is considered that these difficulties would be overcome by passing amending legislation to:

1. remove the Tribunals from the division to ensure that not only are they independent, but also will be perceived to be independent;

2. abolishing the functions of the Director of the Division and the Executive Director of the Commission in respect of the Tribunals (other than that provided for in Section 2.44(4), in respect of the Director;

3. the creation of an office of Registrar as the executive officer of the Tribunals;

and

4. the transfer to the Registrar of the functions currently allocated to the Director and Executive Director.

These and associated recommended amendments will be the subject of further submission.

SCHEDULE OF MATTERS INITIATED IN THE ORIGINAL JURISDICTION OF THE MISCONDUCT TRIBUNALS

| Matters abandoned | - | 1 |
| Matters presently being heard | - | 1 |
| Matters awaiting hearing | - | 3 |

TOTAL NUMBER OF MATTERS INITIATED | 5 |
**SCHEDULE OF APPEALS LODGED IN THE APPELLATE JURISDICTION OF THE MISCONDUCT TRIBUNALS**

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<th>Status</th>
<th>Count</th>
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<td>Heard</td>
<td>2</td>
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<td>Awaiting determination of writ of certiorari challenging</td>
<td></td>
</tr>
<tr>
<td>Commissioner's power to dismiss</td>
<td>1</td>
</tr>
<tr>
<td>Adjourned at request of solicitors to enable further instructions to be obtained</td>
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</tr>
<tr>
<td>Assigned a hearing date</td>
<td>1</td>
</tr>
<tr>
<td>Awaiting hearing</td>
<td>1</td>
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</table>

**TOTAL NUMBER OF APPEALS LODGED**

7
COMMISSIONER FOR POLICE SERVICE REVIEWS

The Commissioner for Police Service Reviews hears applications by members of the police service in respect of transfers, promotions and certain classes of administrative decisions. This is a totally new process which provides an informal mechanism to review such decisions. It replaces the former Appeal Board, described in the Fitzgerald Report as being "overly formal, legislative and cumbersome".60 The report further stated:

"Legal adversarial processes have no place in administrative and managerial promotion decisions."61

Under the Police Service Administration Act 1990 (PSA Act) and the Police Service (Review of Decisions) Regulations 1990 an officer of the Queensland Police Service who is aggrieved by a decision 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);
- or appointment of an officer as a staff member;

within the Queensland Police Service, may make application to have the decision reviewed by the Commissioner for Police Service Review (the Review Commissioner).

By virtue of Section 1.4 of the PSA Act, the Chairman of the Commission is empowered to nominate any member of the Commission as a Review Commissioner. A Review Commissioner is therefore independent from the Police Service.

Pursuant to his powers the Chairman in June last year nominated Dr Janet Irwin to be a Review Commissioner and appointed the Registrar of the Misconduct Tribunals to be also the Secretary to the Commissioner for Police Service Reviews. As the volume of work has increased dramatically this year the Chairman in February nominated Mr John Kelly as a second Review Commissioner.

Procedures had to be developed from scratch for the conduct of the informal administrative proceedings which were envisaged by the Act and in the Fitzgerald Report. The Director, Grievance Hearings, Public Sector Management Commission was consulted

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60 The Fitzgerald Report, p.255
61 ibid, p.255
and, in general, the procedures adopted mirror those of the Public Sector Management Commission for the hearing of appeals against administrative actions in the public sector.

These guidelines were published by the Police Service as a Commissioner's Circular (89/90). (Annexure 5.) In consultation with the Police Service, the Secretary is presently considering some "fine tuning" to these guidelines. It was always envisaged that as this was a new procedure some adjustments would be required after a period of time in light of experience.

The review process is based on an exchange of written submissions prior to the hearing with the purpose of the actual hearing being primarily to clarify and discuss matters of concern. It is not intended that parties to the review recite their written submissions as these have been read beforehand. Usually the hearings do not extend beyond an hour's duration. A report setting out the Review Commissioner's reasons for the decision is sent to the parties within seven days of the hearing.

The Public Sector Management Commission consented to the review hearings being held at its premises in the Executive Building Annex. When the Commission Headquarters moved to Toowong late last year the Review Commissioners decided it would be more convenient to hold the hearings at the Commission's city offices at 160 Ann Street.

In accordance with the legislation the review process is conducted having regard to the following principles:

- a review is an administrative proceeding of a non-adversarial nature;
- proceedings on a review should be informal and simple;
- legal representation is not permitted to any persons concerned in a review.\(^{62}\)

The present legislation has extended review rights of decisions relating to promotions to all police officers other than the Commissioner and Executive Officers (who are appointed by Governor-in-Council). Previously police officers could appeal only against appointment to the rank of Sergeant and appellants were required to hold the rank immediately below that to which the appointment was made. No appeals were available against promotions to any commissioned officer rank, which were recommended by the Commissioner to the Minister and Cabinet, and approved by the Governor-in-Council.

The overwhelming majority of applications received to date deal with promotion.

Significantly a Review Commissioner is only empowered to make recommendations to the Commissioner of the Police Service (the Police Commissioner). However, there is a requirement upon the Police Commissioner to provide a brief summary of reasons why any recommendation of the Review Commissioner is not accepted.\(^{63}\) To date the Police

\(^{62}\) Police Service Administration Act 1990, part IX

\(^{63}\) Police Service (Review of Decisions) Regulations 1990, 13 (4)
Commissioner has accepted all the Review Commissioner's recommendations on promotions.

From late December 1990 the Police Service commenced to fill positions in the Service which had been vacant for some time. This has stimulated a dramatic increase in the volume of applications for review. A factor in the increase of applications is that the merit principle is now enshrined in legislation and promotions in the Police Service are now competitively sought.\textsuperscript{54} It may be reasonably concluded that officers who would have expected promotion under the previous seniority principles now find themselves left in the wake of more meritorious applicants. Further, the review process is still in its early days and it may be that some officers who have been unsuccessful in promotion are seeking redress through the Review Commissioner if only to "try out the system".

Generally each Review Commissioner sits once a week and, with two Commissioners sitting, seven to nine applications are dealt with each week. At present 194 applications are at various stages of readiness for hearing with about 25 - 30 applications actually ready to be heard. Of the 29 applications heard this year the Review Commissioners have affirmed 21 decisions and recommended that 8 be set aside or varied in some manner (including that a new selection panel be convened to consider some applications). A schedule of reviews for the period June 1990 to March 1991 is set below.

It is the aim of the Review Commissioners that applications be dealt with expeditiously. To achieve this objective requires the co-operation of all parties to the review including the applicant, the appointee and the selection panel convenor who prepares a report on the selection process. While the volume of applications received appear to put a strain on the present process, it is generally considered that it is working well and is favourably regarded by those who have had contact with it. It may fairly be considered as one of the achievements of the Commission.

**Legislative Amendment**

There is however one area where it is suggested that legislative amendment could be considered.

As has been stated the legislation allows an officer who is aggrieved by a decision relating to a transfer to apply to have the decision reviewed by the Review Commissioner.\textsuperscript{55} It is to be noted that the Fitzgerald Report after mentioning that the Inquiry received submissions which claimed that there had been cases where officers were selectively posted to the country for the sole purpose of creating a vacancy in Brisbane, so that it could be filled by a person favoured by a senior officer concluded that:

"Appeals against transfer decisions are not considered appropriate. Officers will be expected to serve in the Force according to organisational priority and interests of

\textsuperscript{54} PSA Act 1990, s.5.2

\textsuperscript{55} PSA Act, Part IX
Police Service (Review of Decisions) Regulations 1990 reg 5 (1) (b)
the community, subject to the greatest possible consideration of individual circumstances.\textsuperscript{66}

The Police Service recently expressed concern to the Commission as to this right of review. Its concern stemmed from a number of applications for review received from officers who at the threshold of their careers received their first posting to the Police Communications Centre at Police Headquarters in Brisbane.

It is quite conceivable that this particular right of review could cause considerable interference with the Police Commissioner’s statutory responsibility for the efficient and proper administration, management and functioning of the Police Service.

It is submitted it may be appropriate to restrict this right of review by amending the legislation to enable only those officers actually transferred to seek a review against their own transfer for reasons that they claim are unfair or personally punitive, rather than for organisational priorities. Officers are expected to serve anywhere in Queensland and this principle should be maintained in the interest of effective policing.

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<td>* Set Aside/Varied</td>
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<tr>
<td>out of time</td>
<td>8</td>
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<tr>
<td>** Matters awaiting hearing</td>
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<td>TOTAL NUMBER OF REVIEWS LODGED</td>
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<td></td>
<td>351</td>
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\* This includes recommending that a new selection panel be convened to reconsider applications.

\** These matters are in various stages of readiness with only a small proportion actually ready for hearing.

<table>
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<tr>
<th>PROMOTION</th>
<th>TRANSFER</th>
<th>STAND DOWN OR SUSPEND</th>
<th>DISMISSAL</th>
<th>DISCIPLINARY SANCTION</th>
<th>APPT. AS A STAFF MEMBER</th>
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<td>315</td>
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\textsuperscript{66} The Fitzgerald Report, p.256
PROCEDURAL FAIRNESS

Procedural fairness was nominated as one of the issues to be specifically addressed by the Parliamentary Committee in its review of the Commission. It is a consideration of some significance to the Commission in relation to two of its functions, the conduct of hearings and the preparation of reports. Procedural fairness in relation to both activities is discussed below.

COMMISSION HEARINGS

Prima Facie Obligation to Hold Open Hearings

The provisions of the Act impose a prima facie obligation upon the Commission to hold open hearings. Section 2.17 (4) of the Act states that a hearing shall as a general rule, be open to the public but if, having regard to the subject matter of the investigation, or the nature of the evidence expected to be given, the Commission considers it preferable, in the public interest, to conduct a closed hearing, it may do so. This provision recognises the many benefits of holding hearings in public.

The Benefits of Open or Public Hearings

Commissioner Fitzgerald Q.C. attributed to a large extent the success of his inquiry to the fact that his hearings were based on openness. At page 10 of his report Mr Fitzgerald Q.C. stated that his inquiry could not have succeeded without the confidence, co-operation and support of the public. He added that to gain these things the inquiry had to be as open as possible so that the public, including people with information, could see that it was a genuine search for the truth. This Commission is very mindful of these comments and recognises their force.

In the first report by the Committee on the ICAC to the Parliament of New South Wales Inquiry into Commission Procedure and the Rights of Witnesses that body also recognised the benefits of public hearings noting specifically that organised crime and corruption flourishes on secrecy. In that report the Honourable A R Moffatt Q.C. expressed the view that one of the ICAC's most important functions was exposure and that open hearings were an essential element of such exposure.

That report also quotes Mr F Costigan Q.C. as saying that "once you start investigating the allegations of public corruption privately you then add the additional smell of the cover-up, and even though it may be quite unfair the innocent person involved in such an exercise carries with him the unspoken smear – what did happen?"

In its 1990 Annual Report the Chairman of the ICAC, Mr Temby Q.C., recognised that public hearings have the great benefit of public education. Further, publicity generated by hearings can be of great assistance in convincing people that public sector corruption is a social evil which ought not to be tolerated. He recognised that public hearings ensure public accountability without which public confidence and support will not arise.
This Commission agrees completely with the views expressed above and recognises that if the Commission were to continuously act in secrecy then it would be labelled a "Star Chamber" and would lose the support of the public, the legal profession and the bodies over which it has a supervisory control.

In summary therefore the benefits of holding open hearings include;

- Public accountability;
- Public education;
- To encourage those with information to come forward;
- Publicly clearing the names of the innocent;
- Gaining the public confidence by enabling it to be seen that there is a genuine search for truth;
- Public exposure of corruption as a basis for prevention; and
- In ensuring that organised crime and corruption does not flourish through secrecy.

The Commission's Public Hearing Experiences

The Commission has already seen the benefits of public hearings. Those hearings involving the jury tampering allegations and the allegations of impropriety against officers of the Queensland Corrective Services Commission, clearly established that persons with information, who had until that time not come forward, were prepared to do so as a result of the publicity surrounding open hearings.

In the jury tampering case, submissions were received from many interested persons with real concerns about the process of jury selection.

Some of the primary reasons for holding the hearing concerning the Queensland Corrective Services Commission, in public, were that there had been allegations of a cover-up by that Commission and these issues had been canvassed at great length and great detail in the media. This Commission was not prepared to be compromised by the allegation that it had participated in a further cover-up by conducting private hearings. The original complainants have indicated that they are very satisfied with the thoroughness and even handedness of the investigation.

Reasons for Holding Private Hearings

Notwithstanding the multifarious reasons for holding hearings in public, Messrs Fitzgerald, Moffatt, Costigan and Temby recognised the necessity on occasions to hold private hearings. These are generally of shorter duration and far smaller in ambit, than the public hearings.
In determining whether on balance a hearing should be heard in private the following are some of the matters which the Commission considers:

- Whether public disclosure may prejudice the fair trial of any person on a pending or future criminal charge;

- Whether public disclosure may harm the reputation of any person;

- Whether public disclosure may adversely affect the ability or capacity of the Commission to received information in confidence. For informants to maintain confidence in the Commission, evidence that they wish to give will, on occasions, have to be given in camera to protect their identity and to secure them from harm. Confidences must be protected where possible;

- Whether public disclosure may endanger the safety of any person;

- Whether public disclosure may prejudice ongoing investigations by allowing the person the subject of the allegations, the opportunity to abscond or to threaten or otherwise interfere with witnesses or tamper with evidence;

- Whether public disclosure may prejudice any person in his/her community, career or otherwise;

- Whether public disclosure may provide a window into the investigation for the corrupt.

The Rules of Natural Justice

The principles of natural justice apply whether the Commission holds a hearing in public or in private. The application of the principles of natural justice depend on a whole range of circumstances which vary from case to case. Tucker LJ stated in Russell V Duke of Norfolk (1949) 1 All E.R. 109 at page 118:

"the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."

In a nutshell, the duty of the Commission is to:

- listen fairly to all relevant evidence relating to an issue;

and

- before making any adverse finding of fact concerning any person, to give that person the opportunity to respond.

There is a common misconception that the rules of natural justice require that the technical rules of evidence be applied. This is not the case. Lord Diplock in R—v— Deputy Industrial Injuries Commission; ex parte Moore (1965) 1 QB 486 at 488 stated that:
"the technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi judicial functions must base this decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be irrelevant."

Statutory Provisions Governing Procedure

The Commission's procedures for taking evidence in both public and private hearings are governed by Division 2 of Part III of the Act. These provisions in summary permit or require the following:

1. Section 3.20. The Commission may prohibit the publication of evidence if in its opinion publication would be unfair to any person or contrary to the public interest.

2. Section 3.21. (1) The Commission is not bound by the rules or the practice of any court or tribunal as to evidence or procedure. Further it may inform itself on any matter and conduct its proceedings as it thinks proper.

3. Section 3.21. (2) The Commission shall at all times act independently, impartially, fairly, and in the public interest; further it shall act openly, except where to do so would be unfair to any person or contrary to the public interest; and shall include in its reports an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations.

4. Section 3.23. (1) In any proceedings of the Commission a person concerned therein may appear in person or by his legal representative. He may appear by an agent if that agent is approved by the Commission.

Procedures for Public Hearings

Within this statutory framework which is very general in terms, the Commission has faced significant difficulties in formulating procedures which have general application to all of its public hearings. It has modified its procedures and will no doubt continue to modify them as experience or legal requirements dictate. It has and will continue to be most receptive to submissions by bodies such as the Queensland council for Civil Liberties and the Law Society.

Clearly there will always be exceptions to the general policy or standard procedures. Dispute will often arise as to whether any particular fact situation is an exception and further how the general policy or standard procedure is to be applied to any fact situation. Notwithstanding this area for dispute it is intended that where the circumstances of the particular matter permit the following procedures will apply:
1. Where the person is the subject of an allegation, that person will be given the opportunity to respond to the specific allegation in a formal interview prior to the evidence being led.

2. A notice of allegation will be provided to the person indicating when the evidence will be led and giving the person an opportunity to appear, either in person or by a legal representative.

The notice of allegation will be formulated with sufficient particularity to inform the person to whom it is given of the nature of the allegation.

There will be occasions when prior questioning cannot be carried out or a notice of allegation cannot be provided because to do so:

. will prejudice the investigation;

or

. is not practicably possible regardless of the Commission's best endeavours.

In such circumstances, the Commission will consider suppressing the publication of evidence as to the name of the person adversely mentioned and/or any other evidence which is likely to lead to his/her identification, until that person has had the opportunity to respond to the allegation.

3. The Commission will consider all applications for a private hearing or the suppression of the publication of evidence of the name of any person and/or any other evidence which is likely to lead to his/her identification.

4. In recognition of the requirements of natural justice, where the Commission hears evidence which may be the subject of an adverse finding against a person, it will endeavour to give that person the opportunity to respond to it and the right to cross examine any person making an allegation on which it may be based.

5. Where possible, the Commission will provide the opportunity for a person against whom an allegation is made, to make a brief response on the same day. If the person does not wish to avail himself/herself of this opportunity, the Commission will proceed with all due fairness.

6. Where possible, the Commission will undertake a sifting of the evidence before it is led to the course of a public hearing.

7. As the hearing process is inquisitorial in nature, it is the Commission's duty to seek out the truth. This may require testing a person's word by cross examination. An investigation involving the examination of witnesses is not conducted properly or effectively if every statement made by a witness is accepted at face value. Thus cross examination will be thorough, but fair.
8. In the case of a person wishing to give evidence, or of a person proposed as a witness by any person appearing or represented at a hearing, the Commission will generally require that a statement of the proposed evidence be provided for consideration by it prior to the calling of that evidence.

9. The summons to each witness will contain particulars of the subject matter of the investigation.

10. Each witness who is a person concerned in the proceedings has the right to appear in person, by legal representative or an agent approved by the Commission. Other witnesses may be given leave by the Commission to be represented by a legal practitioner or agent.

11. The Commission will ensure that each witness (whether represented or not) is apprised of his rights and obligations under the Act.

12. In particular, the Commission will satisfy itself that each witness is apprised of the provisions of Section 3.24 of the Act by virtue of which a statement of information furnished by a person to the Commission, or a disclosure made by a witness before the Commission, after that person or witness has objected to furnishing the statement or making the disclosure on the ground that it would intend to incriminate him, is not admissible in evidence against that person or witness in subsequent civil, criminal or disciplinary proceedings, except in relation to proceedings for a contempt of the Commission or an offence of perjury.

13. The Commission will at times receive hearsay if it appears to be relevant to its inquiries. It may be that the publication of such evidence will encourage those with admissible evidence to come forward. Because the Commission appreciates that the publication of inadmissible hearsay may adversely affect the reputation or livelihood of an individual, it will adopt the following guidelines in relation to it:

(a) Make it clear prior to the introduction or during the receipt of evidence, that it may be inadmissible hearsay and should be treated with circumspection;

(b) Request the media and all other persons present to characterise it as such in any publication of the proceedings;

(c) Wherever possible, give persons who may be adversely affected by its publication, the opportunity to appear at the time and cross examine;

(d) If a person is not, for whatever reason, in the position to make a contemporaneous response, the Commission may order the suppression of the publication of evidence of the name of that person and/or any other evidence which is likely to lead to his/her identification until such time as he/she has had an opportunity to respond;
(e) If the person who has been provided with this opportunity does not wish to take it up, the Commission will proceed with all due fairness;

(f) In all cases, the Commission will receive submissions as to whether there should be the suppression of the publication of evidence of the name of any person mentioned adversely and/or any other evidence which is likely to lead to his/her identification or adversely affect his/her reputation where the evidence relating to that person is inadmissible hearsay;

(g) In any other case in which it is considered appropriate, the Commission will order the suppression of the publication of evidence of the name of any person adversely mentioned and/or any other evidence which is likely to lead to his/her identification. It is not possible to exhaustively specify the circumstances in which a suppression order is appropriate, however in each case it will be decided on its merits.

14. By use of its powers under Section 3.20 of the Act to prohibit publication of evidence, the Commission will consider and where appropriate make orders suppressing the publication of evidence. Although not an exhaustive list, the following illustrates some of the considerations which might be taken into account in determining whether evidence should be suppressed:

. Where the public disclosure of information might impede law enforcement;

. Whether the public disclosure of information might involve risks to the safety of a witness or an informant;

. Whether the public disclosure of the identity of a person named in evidence might harm the reputation or well being of that person;

. Whether the evidence is relevant and cogent;

. Whether the nature and seriousness of the misconduct alleged justifies disclosure;

. Considerations peculiar to any person, for example whether he or she was a minor at the relevant time;

. Whether a person has had or will have the opportunity to respond to the evidence or allegations;

. Whether the suppression of the evidence will deny other persons the opportunity to come forward to give relevant evidence;

. Whether trade or commercial secrets are involved;

. Whether the evidence is hearsay.
15. All public hearings will be:

- the subject of a report to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly, and to the Minister pursuant to Section 2.18(1) of the Act (This is subject to Section 2.19 of the Act);

or

- dealt with pursuant to Section 2.24(2) of the Act by referring a report thereon to the Director of Prosecutions or as otherwise provided for by that Section.

**Private Hearing Procedures**

Where it has been determined that a private hearing is preferable the procedures will follow as closely as possible those for public hearings. The Commission will consider any application for the hearing to be in public.

**PREPARATION OF REPORTS**

**RESEARCH AND CO-ORDINATION DIVISION REPORTS**

To date the Commission has submitted the following research reports to the Parliamentary Committee:

- Reforms in Laws Relating to Homosexuality – An Issues Paper
- Gaming Machine Concerns and Regulation

The following Issues Papers have been released:

- SP Bookmaking
- Prostitution

Some controversy has surrounded the issue of all the above reports and issues papers.

**Commission's Preferred Procedure**

The Commission's preferred procedure for the preparation of research reports, agreed with the Chairman of the Parliamentary Committee, is that at some suitable stage in the research process an issues paper is released and submissions invited from interested parties and the public generally. These submissions are then taken into account in the preparation of the final report. The Commission's report is in turn examined by the Parliamentary Committee which may hold public hearings on the issue before making its own recommendations to Parliament.
On occasion suggestions have been made that the Commission seeks to usurp the proper role of elected governments in making decisions. This criticism the Commission rejects; its responsibility and its intention has always been to provide the best possible advice to the Committee and when appropriate, the government, on complex legal and social aspects of the criminal justice system.

This is in accordance with the Act.

Section 2.14 (2) of the Act provides that, subject to Section 2.18, the Commission shall report to the Parliamentary Committee:

(a) on a regular basis, in relation to the Commission's activities;

(b) when instructed by the Parliamentary Committee to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice;

(c) when the Commission thinks it appropriate to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice.

Section 2.18 is concerned with the procedures which must be followed in furnishing such a report.

Section 2.15 (c) imposes upon the Commission the responsibility of "researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State".

Section 2.45 (1) (a) requires the Research and Co–ordination Division of the Commission to conduct research "into the problems that from time to time beset, or could beset, the administration of criminal justice in the State".

Some of the functions of this Division are defined in Section 2.45 (2) of the Act as:

"(b) to define trends in criminal activity in particular any trend to organised crime,

(d) to research and make recommendations on:

(i) law reform pertinent to criminal justice . . .

(h) to prepare for the Commission reports . . . relating to its findings in the course of discharging its functions and to its recommendations as to remedial action or appropriate response; and

(i) to report to the Chairman . . . on the discharge of the Division's functions with a view to alerting the Commission and aiding the Commission's determinations."
Once the Division has assembled the relevant material in the form of such a report to the Chairman, the question of making a report under Section 2.14 (2)(c) becomes a matter for the Chairman.

If a report is furnished to the chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Minister under Section 2.18 (1), this is only one element of a process under which the ordinary political process of formulating legislation will operate. In this regard it is a function of the Parliamentary Criminal Justice Committee to examine the annual report and such other reports of the Commission and report to the legislative Assembly on any matter appearing in or arising out of any such report.

It is ultimately up to Parliament to decide whether to follow the advice given by the Commission.

In the Ainsworth case, McPherson J (with whom Lee J agreed) said at p 25:

"... the Commission's Report is only one stage in an extensive and continuing process culminating in Parliamentary debate that is calculated to secure procedural fairness to the prosecutors and others similarly placed."

It was not feasible to follow the preferred procedure with the first two reports issued by the Commission and this was noted in the preface to both reports.

Reforms in Laws Relating to Homosexuality – an Information Paper

The information paper on reform of the laws relating to homosexuality was prepared to a deadline in response to a request to the Commission by the Chairman of the Parliamentary Committee. It was not possible to conduct the exhaustive study that the Commission would have preferred within the time scale allowed for the project, and accordingly the paper itself was primarily a survey of current practice in related jurisdictions and the apparent options available in Queensland. It was prepared in the knowledge that the Parliamentary Committee would be calling submissions and holding hearings on the topic.

Gaming Machine Concerns and Regulations

The report Gaming Machine Concerns and Regulations was prepared under the constraint of an announced timetable for the introduction of gaming machines. As this report was the cause of some controversy the circumstances surrounding it are examined in some detail.

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67 The Queen v The Criminal Justice Commission, Ex parte Ainsworth and Ainsworth Nominees Pty Ltd, OSC No 28 of 1990 (unreported decision of Queensland Full Court) McKenzie J at p.17

68 The Act, s.4.8 (1) (c)

69 Decision of the Full Court op cii, McKenzie J at p.25
Illegal (in-line) gaming machines and associated corruption were the subject of evidence before the Fitzgerald Inquiry. The gaming machine industry, both legal and illegal, was also known to have been considered and to have been commented adversely upon by a number of inquiries in other jurisdictions.

In its report, the Fitzgerald Inquiry recommended that "as an essential part of its immediate functions" this Commission review the matters arising from evidence before the inquiry, including illegal gambling. The reviews were to include consideration of legalisation or decriminalisation and the "extent and nature of the involvement of organised crime in these activities".\textsuperscript{70}

In particular in relation to gambling, Commissioner G.E. Fitzgerald Q.C. underlined a need for caution:

"Law reform in respect of gambling needs to be approached in a comprehensive, considered way. It is inherently difficult. Until a comprehensive review is undertaken, narrowly focussed piecemeal action including expanding the legal means of gambling, is inadvisable."\textsuperscript{71}

Notwithstanding the recommendation of the Fitzgerald Inquiry, both the previous and current governments announced intentions to introduce gaming machines into the state on an extremely wide scale. No comprehensive study of the social and criminal aspects of such a wide scale introduction of gaming machines had ever been conducted in Queensland; no such study had been conducted in Australia since a Victorian Board of Inquiry recommended against the introduction of poker machines in 1983.

The report had its beginnings in January 1990 when the Chairman attended, by invitation, a meeting of a group described to him as a Cabinet sub-committee appointed to prepare for the introduction of poker machines into Queensland. During the meeting, the Deputy Premier, who was chairman of the sub-committee, advised that the Government intended to introduce poker machines into Queensland as soon as possible, and asked Sir Max if he could be of any assistance to the sub-committee. He replied that he could prepare advice as to "areas of likely difficulty". Mr Burns requested him to do so.\textsuperscript{72}

When the Commission commenced its study it was not fully operational. For this reason, and also because of the announced decision to introduce machines and the then very tight timetable for their introduction the study was necessarily severely restricted in its scope. It was not possible given the timetable to undertake the "comprehensive review" recommended by Commissioner Fitzgerald Q.C.; nor was

\textsuperscript{70} Recommendation B 11 2, Fitzgerald Report, p.377

\textsuperscript{71} The Fitzgerald Report, p.195

\textsuperscript{72} Ainsworth judgement, McPherson I, p.3; McKenzie I, p.3
it possible for the Commission to contemplate the adoption of its preferred procedure in the preparation of the report.

What the Commission could achieve after the meeting with the Deputy Premier was largely dictated by events beyond its control, principally the following:

19 March 1990 – the Cabinet decision to introduce poker machines with legislation to be put before Parliament in July.

9 April 1990 – Expressions of Interest were called for supply and maintenance of gaming machines.

23 April 1990 – “Preliminary instructions for the Parliamentary Counsel”, in effect draft legislation, were completed.

10 May 1990 – Closing date for Expressions of Interest.

24 May 1990 – the draft legislation was forwarded to the Commission.

The Commission’s report (dated 30 May 1990) was given to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Minister in accordance with Section 2.18 (1) of the Act on 1 June.

The report was made under Section 2.14 (2) of the Act. Its preparation was treated as a function of the Research and Co-ordination Division under Section 2.45 (2) of the Act. Section 2.46 of that Act affirmatively requires that the Division have regard to the activities, findings and recommendations of agencies outside the State that are concerned with the administration of criminal justice, with a view to relating and adapting such activities, findings and recommendations to the needs of the State, and so, in discharging the Division’s functions, avoiding needless duplication of the work of those agencies. This was in fact what was done by the Commission in this report. Use was made of earlier reports made by investigators or commissioners in other states on the subject of the gaming machine industry.73 Indeed, the Commission had neither the time or resources to conduct more extensive investigations.

Further, in these circumstances, it was unable to do much more than consider the potential criminality associated with aspects of the introduction of gaming machines and make recommendations with a view to limiting the risks of criminal infiltration or activities. This was clearly stated in the foreword and introductory note to the report. It was also made clear that the report was not issued in the format that would usually be used by the Commission.

The list of companies expressing interest in supplying gaming machines became available only at a very late stage. The Commission was faced with the impossibility of contacting all interested parties and the consequent dilemmas that would flow from contacting only some of those concerned.

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73 Ainsworth Judgement, McPherson J at pp.12-13; McKenzie J at pp.11-12
The report made recommendations with respect to only two of the manufacturers of gaming machines, arising from consideration of material placed before previous inquiries and investigations. Much of this material derived from statements of the persons representing those manufacturers before these inquiries or investigations or from reports of inquiries or investigations before which they had every opportunity of being represented.

Another consideration also operated. Many of those considered by the report were applicants for potentially large contracts from the State Government or large contracts arising from its actions. That such individuals and corporations must thereby endure some greater scrutiny as a result of putting themselves forward for such potential benefit is surely beyond question. Indeed, such a principle is enshrined in many gaming regulatory statutes, e.g. Nevada:

"An application for a state gaming licence is seeking the granting of a privilege, and the burden of proving his qualification to receive any licence is at all times on the applicant. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action of financial loss . . . with respect to an application and expressly waive any claim for damages as a result thereof. An application for a licence . . . shall constitute a request to the Board and Commission for a decision on the applicant's suitability, character, integrity, and ability to participate or engage in, or be associated with the gaming industry in the manner or position sought . . ."74

The Commission was placed in the position of having to make such assessments due to expressions of interest for the supply of gaming machines being called and those expressions of interest being returnable before any legislation or viable alternative regulatory mechanism was in place.

In addition, it was envisaged that when the Commission's report was furnished to the parliamentary Committee, it would hold public hearings and allow replies to be made to any issues raised in the report as part of the whole process which has previously been referred to. This was also in accord with an understanding which had previously been reached between the chairmen of the Commission and the Parliamentary Committee.

The criticisms that the Commission failed to give natural justice to the persons mentioned in the report must be considered against this background. One company mentioned in the report was Ainsworth Nominees Pty Ltd of which Mr Leonard Hastings Ainsworth is managing director. The Commission recommended that "the Ainsworth group of companies not be permitted to operate in the gaming machine industry in Queensland". The company and Mr Ainsworth (the prosecutors) applied to the Full Court for writs of certiorari and mandamus against the Commission. The basis of the application was that the findings were reached in

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74 Nevada regulation, quoted *Gaming Machine Concerns and Regulations*, p.15
proceedings which denied them natural justice, in so far as they were not informed that the proceedings were taking place, nor informed of the case against them, nor given the opportunity to answer the case. It was further argued that the Commission failed to fulfil its statutory obligations under Sections 2.14 and 3.21 of the Act.

It was sought to quash the findings in the report which related to them or the Ainsworth group; that the Commission be required to disclose all evidence before it relating to them or that group; that it permit them to appear before it by solicitor or counsel; to cross-examine those giving direct evidence concerning them; to make written or oral submissions; and to provide in its report an objective summary and comment on matters pertinent to its recommendation.

During the proceedings it was suggested, in the alternative, that the Court might make declarations that the Commission had failed to give the prosecutors natural justice and to comply with its obligations under the Act.

The Court concluded that neither of the statutory provisions relied on nor the general law conferred on the prosecutors the right of being afforded an opportunity of being heard before the Commission adopted and furnished its report, or imposed upon the Commission a corresponding duty of affording such an opportunity. Further it did not consider that the prosecutors had any "legitimate expectation" that was liable to be adversely affected by the performance of the Commission's research and reporting function unless they were accorded procedural fairness. Nor did the evidence show that any reputation or goodwill that attached to the prosecutors in Queensland had been placed in jeopardy by the Commission's report, so as to import such a requirement.

At pp 24–25 of his judgement McPherson J (with whom Lee J agreed) said:

"To require that as an inflexible rule the Commission should, before furnishing its report in accordance with s.2.18 (1), first provide those affected by its conclusions or recommendations with an advance opportunity of knowing what was going to be said about them and the information on which it was based, as well as of making representations to the Commission on the subject, will certainly tend to promote delay and may indirectly circumscribe the debate in Parliament. Having regard to the range of criminal activities that the Commission is required to keep under review, insisting on such a course could be expected not only to close off useful sources of information otherwise available to the Commission, but to frustrate the Commission's discharge of its statutory functions and responsibilities. That is a factor of some importance in circumstances in which the function of inquiring and reporting or recommending is undertaken: National Companies and Securities Commission v News Corporation Limited (1984) 156 CLR 296, at 313, 316, 323–324; Maxwell v Department of Trade and Industry
(1974) Q.B. 523, at 534, at 542. Performance of such a function is not to be confused with the duty to hear and determine, which is what courts and similar tribunals are required to do."

The Court unanimously vindicated the Commission's action and ordered costs against the prosecutors.

On 7 December 1990, the High Court (Mason J and Toohey J) granted the prosecutors special leave to appeal from this decision. To date this appeal has not been heard.

Finally, it is worth recording that once the report passed to the Parliamentary Committee, the Committee did, as arranged, publish newspaper advertisements calling for public submissions with respect to the report. Additionally the Committee wrote to all those who were adversely named in the report, including the prosecutors, inviting them to appear at public hearings. The prosecutors were permitted to furnish written submissions to the Committee after the original deadline. It is understood that they will be given the opportunity to appear at future public hearings of the Committee.

It would seem to be a pertinent consideration that some of those who complained that they had not been given natural justice in the Commission's report chose not to avail themselves of the opportunity presented to respond to the report before public hearings of the Parliamentary Criminal Justice Committee. Mr Ainsworth and his organisation, as mentioned above, sought recourse in litigation and, together with some apparently associated interests, through highly repetitive recourse to a particular Sunday newspaper. This latter publication itself made statements about individuals who were given no opportunity to respond to the allegations made against them. That such critics of the Commission were motivated solely by concern over natural justice would seem to be open to question. In considering similar matters in response to a request from the NSW Committee on the ICAC, Mr G. E. Fitzgerald Q.C. wrote:

"In such circumstances, it is inevitable that persons who are dissatisfied will be able to blame the inherent disadvantages on the methods of those who make decisions, absurd and unfair though that may be, and, since such complaints are considered newsworthy, especially if made by a prominent person, the process is commonly accompanied by controversy and often an exchange of personal abuse. Ironically, such public dissent by those disaffected is an aspect of the openness at which they protest, and some who complain of loss of reputation seem unconcerned at the effect of their assertions (eg "witch-hunt" and "McCarthyism") upon the reputations of those whom they criticise."\(^{75}\)

\(^{75}\) Letter from G.E. Fitzgerald Q.C. to Chairman, Committee on the ICAC, Inquiry into Commission Procedures and the Rights of Witnesses, Appendix Two, First Report, Parliament of New South Wales, November 1990, p.276
Ironically, in the circumstances, the past practice of the Ainsworth group and associated interests in attempting to overwhelm regulatory agencies with complaints and litigation was one of the grounds on which the Commission recommended against its participation in the gaming machine industry in Queensland.\textsuperscript{76} Partly for this reason the Commission also recommended that any gaming regulatory authority be protected from such assault by litigation and this concern has been reflected in provisions of the Gaming Machine Bill 1991.

In issuing this report the Commission discharged, as best as it was then able given the extraordinary circumstances, the responsibility given it by the Fitzgerald Inquiry to review this major extension of legal gambling. The process of review initiated by the release of the Commission’s report, including the investigations and hearings conducted by the Parliamentary Committee, resulted in significant amendment and improvement to the original draft legislation. Ultimately, the Commission was gratified by the consideration given to its concerns by the Government.

\textbf{OTHER COMMISSION REPORTS (OFFICIAL MISCONDUCT DIVISION)}

In addition to reports of the Research and Co-Ordination Division, there are a number of other reporting obligations imposed by the Act which are relevant to the discharge of functions allotted to the Official Misconduct Division.

(a) Reports of public hearings of the Commission signed by the Chairman. (Section 2.18 of the Act);

(b) Reports of the Commission on court procedures. (Section 2.19(1) of the Act);

(c) Reports to the Chairman by the Director of the Official Misconduct Division. (Section 2.24(1) and (2) of the Act);

(d) Reports to the Director of Prosecutions, Executive Director of the Commission, Chief Justice, Chairman of District Courts, Chief Stipendiary Magistrate and the appropriate principal officials in a unit of public administration. (Section 2.24(2) of the Act); and

(e) Report of Director of the Official Misconduct Division. (Section 2.30 of the Act).

(a) \textbf{Reports of the Commission signed by the Chairman}

As has previously been stated, by virtue of Section 2.18(1) of the Act, subject to Section 2.19, a report of the Commission signed by the Chairman must be furnished to the Chairman of the Parliamentary Committee, the Speaker of the

\textsuperscript{76} Details of known litigation and complaints by L.H. Ainsworth and associated interests against regulatory agencies and their personnel supplied previously to Parliamentary Criminal Justice Committee.
Legislative Assembly and the Minister for tabling in the Legislative Assembly and printing.

All Commission public hearings will be furnished in accordance with this provision (subject to Section 2.19) or dealt with pursuant to Section 2.24(2) by referring a report in the form of a brief of evidence to the Director of Prosecutions or otherwise as provided by that Section.

Such reports will involve a close analysis of the evidence given at the hearing and make recommendations based on the evidence. In this regard, Section 3.21(2)(c) of the Act will be applied. This requires the Commission to include in its reports:

(i) its recommendations with respect to the relevant subject-matter;

(ii) an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations.

Procedural fairness will be afforded to any person/persons who may be adversely named through applying the procedure in respect of public hearings which has previously been referred to.

In preparing such a report, regard will also be had where appropriate to Section 2.19(2)(b) by virtue of which the Commission may make a report without disclosing or referring to the information in its possession if it is of the opinion that strict confidentiality should be maintained in respect of it.

(b) Reports of the Commission on Court Procedures

By virtue of Section 2.19(1) of the Act, a report of the Commission relating to the procedures and operation of any court of the State or the procedures or operation of the registry or administrative offices of any such court must be furnished to the:

(a) Chief Justice, in the case of the Supreme Court;

(b) Chairman of District Courts, in the case of the District Court;

(c) Judicial officer, or the principal such officer, if there be more than one, in the court, or the system of courts, to which the matter dealt with in the report are pertinent.

The report of the investigative hearing into alleged jury interference was made to the Chief Justice under this provision. The Chief Justice provided the Report to the Attorney-General who tabled it in the Legislative Assembly.

Although it was resolved to conduct public hearings, some of the evidence was heard in closed session. However, after examining the evidence, both private and confidential, it was concluded that submissions could be made and one report published, which dealt with all evidence.
This report demonstrates that the same approach is taken to the formulation of Section 2.19(1) reports as those under Section 2.18 of the Act.

Procedural fairness is afforded by applying the procedures for hearings (both public and private which have previously been mentioned).

It is possible that such a report could be compiled as the result of a traditional investigation without the benefit of hearings (or a combination of such an investigation and private hearings). However, in any such case, the principle that any person who may be the subject of an allegation or who may be adversely named in respect of the matter to which the report relates, is to be given an opportunity to respond either through a formal interview or to a notice of allegation or provisional adverse finding, will be applied. In such a case, the Commission is acting in accordance with Section 3.21(2)(a) of the Act which requires it to "at all times, act independently, impartially, fairly and in the public interest".

Any person receiving a notice of provisional adverse finding will be given an opportunity, within a specified period, to provide reasons by way of adding evidence, the making of a submission or otherwise in writing to the Commission, why the proposed finding (the terms of which will be particularised in the notice), should not be made, or should be the subject of variation, alteration, addition or amendment.

In relation to the conduct of traditional investigations, procedural fairness is assured by following what has previously been said on this topic in respect of Complaints Section/Multi Disciplinary team investigations.

(c) Reports to the Chairman by the Director of the Official Misconduct Division

Section 2.24(1) of the Act requires the Director of the Official Misconduct Division to report on every investigation carried out by the Division and every matter of complaint, or information, submitted to him by the Complaints Section. Any such report must be made to the Chairman (Section 2.24(2)).

In such cases, the Chairman is furnished with the investigation file. This includes a report by the investigating officer, the relevant Team Leader, Chief Officer of the Complaints Section (in appropriate cases) and the Director of the Official Misconduct Division. Each report contains a recommendation as to the appropriate action to be taken.

Although such reports could be in relation to matters in respect of which public hearings are held or Section 2.19(1) is relevant, this will not be so in the majority of cases.

In general, such reports will be compiled and submitted to the Chairman on the basis of a traditional investigation. Although in appropriate cases an investigation may be assisted by some private hearings. In any event, regard will be had to the necessity to act independently, impartially, fairly and in the public interest. Thus, it will give any person the subject of an allegation or who may be adversely named
in the report, an opportunity to respond either through formal interview or to a notice of allegation or of provisional adverse finding as has previously been explained. Reference is again made to what has previously been said concerning procedural fairness in OMD investigations.

Where the report is prepared on the basis of a proceeding conducted by the Commission, Section 3.21(2)(c) is applied in the preparation of the report. This section will provide the guiding principle of all Official Misconduct Division reports whether a hearing has been conducted in support of the investigation or not.

(d) **Reports to the Director of Prosecutions, Executive Director of the Commission, Chief Justice, Chairman of District Courts, Chief Stipendiary Magistrate and appropriate Principal Officer in a Unit of Public Administration**

Where a report is made to the Chairman under Section 2.24(1) and (2), the Chairman may authorise (pursuant to Section 2.24(2)) that it also be made to one or more of the following as he considers appropriate.

(a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted;

(b) the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;

(c) the Chief Justice of the State, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;

(d) the Chairman of District Courts, if the report relates to conduct of a judge of District Courts;

(e) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts or Children's Courts;

(f) in a case to which paragraphs (c), (d) and (e) do not apply, the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.

Section 2.24(3) requires that a report made to the Director of Prosecutions or the Executive Director must contain or be accompanied by all relevant information known to the Official Misconduct Division, whether the information –

(a) supports a charge that may be brought against any person in consequence of the report;

or
(b) supports a defence that may be available to any person liable to be charged in consequence of the report.

All reports made under Section 2.24(2) will be in the form of a full brief of evidence in the traditional sense, with appropriate observations as to the evidence and recommendations as to the action to be taken. In the case of the Director of Prosecutions or other prosecution authority, the recommendation will be as to the criminal charges considered to be available on the application of the appropriate standard of proof. An agreement has been reached with the Director of Prosecutions as to the form and contents of the brief.

In the case of the appropriate principal officer in a unit of public administration, the recommendation will be as to the disciplinary action which it is considered available on the appropriate evidential standard.

The report to the Executive Director will be in the same form as that made by the Director to the principal officer of a unit of public administration under Section 2.30 of the Act.

In all cases, fairness to the person/persons, the subject of the recommendations will be assured by the manner in which the preceding investigations are conducted. The principals that have previously been referred to will be applied to any such investigation, including ensuring that the person/persons will be given the opportunity to respond to the allegations against him/her.

Where the investigation is in relation to the conduct of a judge or other person holding judicial office in the court of the State, the Division will conduct the investigation in accordance with Section 2.20(3) of the Act, by virtue of which the authority of the Division to conduct the investigation -

(a) is limited to investigating misconduct such as, if established, would warrant his/her removal from office;

(b) shall be exercised by the Commission constituted by the Chairman;

(c) shall be exercised in accordance with appropriate conditions and procedures settled in continuing consultations between the Chairman and the Chief Justice of the State.

Finally, the report to the Director of Prosecutions or Executive Director is made in accordance with Section 2.24(3). Although it is envisaged that there will be cases where the material in the Commission's possession is so extensive that it will be impracticable to comply strictly with the provision. It is unlikely that the Director of Prosecutions will have the capacity to store such material. He has already advised that he does not want the Commission to provide him with all such material at a stage when he has yet to decide whether any charges are to be preferred. Further, it will often be very difficult to determine at such an early stage, whether any information in the Commission's possession supports a defence. It will be recommended in the separate report concerning amendment of the
legislation that this section be amended to reflect the reality of the situation. The recommended amendment would make the Director's responsibility under Section 2.24(3), more akin to the requirement of Section 3.21(2)(c) in respect of Commission reports.

(c) Reports of the Director of the Official Misconduct Division

Where the Director reports to the Chairman pursuant to Section 2.24(1) and (2) of the Act that:

(a) any complaint, matter or information involves, or may involve, official misconduct by a prescribed person; and

(b) the available evidence shows a prima facie case to support a charge of a disciplinary nature of official misconduct against that person;

and the Chairman agrees with this and authorises under Section 2.24(2)(b) that the report be furnished to the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates, the Director will also furnish the report under Section 2.30 of the Act to the principal officer of the unit of public administration in which the prescribed persons hold an appointment. As has previously been stated, at present, only members of the Police Service are prescribed persons for the purposes of the Act.

Where the Director reports to the Commissioner of the Police Service in accordance with (a) and (b), above, it is his duty and the duty of those acting under him to charge the member with the relevant official misconduct by way of a disciplinary charge and have him/her dealt with by a Misconduct Tribunal.

The Commission has developed a form of report for this purpose. Such report contains:

- Background to complaint;
- Summary of investigation (including a summary of the evidence of all known witnesses elicited during the investigation and interviews with the person/persons the subject of the report);
- Recommendations as to charges;
- Information furnished in accordance with Section 2.24(3) of the Act. (All statements and documentary exhibits).

Again fairness to the person/persons the subject of the report is assured by following the investigative/hearing procedures which have previously been referred to.
CONCLUSION

The Commission takes seriously the requirement imposed by Section 3.21(2)(a) of the Act to "at all time act independently, impartially, fairly and in the public interest."

Although this provision strictly applies only in relation to Commission hearings (it is contained in Division 2 of Part III of the Act which concerns "Procedures for Taking Evidence"), the Commission considers that it encapsulates the common thread which runs through the Act in relation to the conduct of investigations by the Official Misconduct Division.

Accordingly this is regarded as the guiding principle in relation to the conduct of all Official Misconduct Division investigations. Procedural fairness will be assured to all persons who may be adversely affected by Commission investigations by applying this principle and the other specific provisions in the Act. The foregoing has referred to these principles and illustrated how they are applied to achieve this objective.
SECRECY AND ACCOUNTABILITY

"Secrecy and Accountability" is a further issue the Committee wished to have addressed. The Commission accepts that these are legitimate community concerns with respect to any organisation charged with law enforcement and criminal investigations. There has been a long history of abuses of their powers by such organisations; the substantial growth of organisations concerned with civil liberties has been one response to these abuses of power.

There is however, a converse tendency. A more centralised and technologically sophisticated society has fostered more sophisticated crime and associated corruption with greater means to shield itself from detection. The inability of traditional law enforcement agencies to deal effectively with such crime and corruption has resulted in the creation of more specialist organisations such as the NSW Independent Commission Against Corruption and the Australian Securities Commission.

This Commission was created as a consequence of a public inquiry showing existing institutions were neither accountable nor effective. Given this heritage and recognising that community concern over "who watches the watchers" is legitimate the Commission has from the beginning set out to be a model organisation in terms of accountability. However it has been charged with the conduct of investigations and the collection and analysis of intelligence which can only responsibly be done in confidence. The competing public interests of ensuring on the one hand that the Commission is accountable and on the other that an appropriate level of confidentiality is maintained are dealt with below.

ACCOUNTABILITY

The Commission is accountable:

- Internally, through mechanisms instituted for the purpose by the Executive and Directors;
- Internally, through the Executive to the Commission;
- To the Parliamentary Committee and through it to the Parliament and the electors;
- To the Courts, as provided in the Act and otherwise;
- To the public on some occasions, or to the media, and thereby (however imperfectly) to the citizens of Queensland;
- To complainants;

Internal Mechanisms

Most of the internal accountability mechanisms instituted within the Commission have been previously discussed in this submission, under the headings of the various Divisions. Where guidelines exist, such as in the public finance area, the Commission has been
concerned to meet or exceed these. In certain areas, such as the accountability mechanisms
for Commission property, the Commission has developed new systems which may well
have much wider application. The Commission as a whole has taken certain steps to
enhance its own accountability, above and beyond the measures implemented within its
administrative units. Some of the more significant of these are discussed below.

Declarations of Personal Particulars and Private Interests and Associations

Two statutory declarations, of Personal Particulars and of Private Interests and
Associations were drafted by the General Counsel to be sworn by the Chairman, the other
Commissioners and all Commission staff. These declarations are considered to be more
stringent than those of any other Australian organisation possessing similar functions to
the Commission. This is considered essential having regard to the Commission's statutory
role in relation to the criminal justice system in this state and is in keeping with the
Commission's aim of establishing a model for other agencies in the state.

The declaration of personal particulars is used to vet all persons being considered for
employment by the Commission, whether on contract, secondment or otherwise. All such
persons are required to complete it before a decision is made to offer employment. This
requirement is referred to in all Commission job advertisements. Applicants are also
advised that a financial statement may be required.

It is emphasised that strict security arrangements surround the statements to ensure
confidentiality. For example, the Declaration of Private Interests and Association is held
by the Chairman.

In association with the vetting procedures, documents have been drafted to enable inquiries
to be made where necessary with financial institutions, with the authority of the person in
respect of whom the inquiry is made.

Register of Pecuniary Interests and Record of Personal and Political Associations

Documents have also been drafted to satisfy the requirement under Section 7.3(1) of the
Act that the Commission maintain:

(a) A register of the pecuniary interests of each Commissioner had by him at the time
of his appointment as a Commissioner or acquired by him during his term of office
as a Commissioner;

and

(b) A record of personal or political associations had by each Commissioner that may
influence him in the conduct of an investigation by the Commission.

These documents have also been used to satisfy the requirement imposed on each
Commissioner by Section 7.3(2) of the Act, to furnish the Commission, the Minister and
the Chairman of the Parliamentary Committee with:

(a) A summary in writing of pecuniary interests had at the time of appointment;
and

(b) Written advice of personal or political associations had at that time.

Forms and Procedures in relation to the exercise of the Commission's Statutory Powers

The Commission has developed forms and procedures in connection with the use of its statutory powers. No such powers are exercised unless the required documentation is completed, setting out the reasons for their exercise, and this documentation is accepted by the Chairman (or in appropriate circumstances, the Director of the Official Misconduct Division).

These procedures have been implemented to ensure accountability in the exercise of these powers through the existence of a permanent record of their use.

For similar reasons permanent records have been created of decisions to disseminate information.

As discussed in particular under the "Secrecy" heading of this submission, all investigation files will be available to the Parliamentary Committee upon the completion of an investigation. These will include documentation relating to the exercise of the exercise of statutory powers and the dissemination of information.

Undertaking as to Confidentiality

This document has been drafted to notify all Commission staff and have them acknowledge their obligations and responsibilities in relation to confidentiality in accordance with Section 6.7 of the Act.

Provision for Independent Investigation of Complaints Against Commission Officers

The Latin question, "quis custodiet ipsos custodes?", literally "who will guard the guards?" was asked by Decimus Junius Juvenalis in the first century AD. It is just as valid today and indeed is the subject of debate from Brisbane to Birdsville. The Commission recognised that as foreshadowed by Mr Fitzgerald Q.C. it would unfortunately be the case, given the nature of its function and responsibilities, that there would be complaints against its officers in the course of performing their duties.

With a view to accountability, the Commission was concerned to establish an independent mechanism to deal expeditiously with such complaints.

To this end, discussions were had with the Attorney-General, the Director of Prosecutions and the Commissioner of Police, whereby such a mechanism was established. This involves an investigation by a Senior Crown Prosecutor, nominated by the Director of Prosecutions and a senior police officer or officers, nominated by the Commissioner of the Police service. They report to the Chairman of the Commission, the Attorney-General and the Minister for Police and Emergency Services.
The Commission is grateful to the Attorney-General, the Director of Prosecutions and the Commissioner of Police for their ready assistance in this regard.

The Role of Commission Members

Reference must also be made to the role of the members who in addition to the Chairman constitute the Commission. The members, as intended by the Report in accordance with the qualifications required by Section 2.3(2) of the Act, bring a broad range of professional and practical expertise and experience to the Commission.

In accordance with Section 2.16(1) of the Act, each member plays an active role in advising and assisting the Chairman and the Commission staff, in relation to the proper discharge of the Commission's functions and responsibilities. Their role is in accordance with the Fitzgerald prescription that:

"Alert energetic people will be needed to perform the demanding tasks which membership of the Commission will involve. The members of the Commission will not merely be "watchdogs" or overseers of performance. That will be but one of their responsibilities."**

Each has a primary area of responsibility in relation to the Commission. These areas are as follows:

Mr Jim Barbeler LL.B  -  Operations and General Counsel matters
Dr. Janet Irwin MB.Ch.B  -  Misconduct Tribunals and police reform
Mr John Kelly B.Sc.  -  Complaints and Corporate Services
Professor John Western Ph.D.  -  Intelligence and Research

They regularly meet with the Commission officers concerned in these areas. In addition, a fortnightly Commission meeting is held at which Directors and other senior staff report and are questioned on the activities of their areas of responsibility. The Commissioners also participate in a range of other activities of the Commission.

Accountability to Parliamentary Criminal Justice Committee

The Commission recognises and endorses the intent of the Fitzgerald Report that Parliament is the institution ultimately accountable to the electorate and that the Commission should be ultimately accountable to the Parliament.

Considering various options, Mr Fitzgerald Q.C. concluded that "An independent body is needed, an autonomous one is not".**

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** Fitzgerald Report, p.310

** The Fitzgerald Report, p.302
This theme was expanded upon later in the Report:

"It is necessary that an independent body exist with the resources and powers to investigate official misconduct. It should not be autonomous.

For Queensland the preferable solution is that such an independent body exist as part of a wider structure which not only addresses official misconduct but which operates an integrated cohesive criminal justice administration."79

The recommended entity was this Commission. It was recommended that:

"a standing Parliamentary Committee, not charged with any other responsibility and known as the "Criminal Justice Committee" should oversee the operations of the Commission . . .

The Commission should report to the Criminal Justice Committee.

. . ."

The Criminal Justice Committee's members should all be subject to specific obligations of confidentiality. The Criminal Justice Committee must have the power to conduct hearings in camera. It should decide what material matters reported to it can be reported to and tabled in the Parliament and when that is to be done. Some matters may never be tabled.

However, that should not prevent the necessary, effective and sufficient oversight of the operations, methods and priorities of the Commission being had by the Criminal Justice Committee, against the background of the constitution of the Commission and reinforced by the checks and balances within it."80

This intention has been enshrined in the Act, in particular by Section 4.8. The current review is part of this process, whereby the Committee is empowered to monitor and review the discharge of the functions of the Commission as a whole and the Official Misconduct Division in particular.81

The accountability of the Commission to the Committee is further facilitated by Section 2.14(2) of the Act which, inter alia, that the Commission report to the Committee:

"(a) on a regular basis in relation to the Commission's activities;"

79 ibid, p.303
80 ibid, p.303
81 The Act, s.4.8(1)
(b) when instructed by the Parliamentary Committee to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice . . ."

Pursuant to paragraph (a), the Commission meets monthly with the Committee to provide a briefing and to answer questions on its activities. It has also briefed the Committee at two public hearings.

The Commission's accountability to the Committee ensures that it in turn is accountable to the Parliament, and ultimately the people of Queensland.

This is again facilitated by Section 4.8(1) of the Act which requires the Committee to report to the Legislative Assembly in relation to a number of matters. In this regard, it is to:

- report to the Legislative Assembly with such comments as it thinks fit, on any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the powers of the Commission, a Commissioner, or of officers of the Commission, to which the attention of the Assembly should, in the Committee's opinion, be directed;\(^\text{82}\)

- to examine the annual report and other reports of the Commission and report to the Legislative Assembly on any matter appearing in or arising out of any such report;\(^\text{83}\)

- to report on any matter pertinent to its functions that is referred to it by the Legislative Assembly;\(^\text{84}\)

- review during a time near to the expiry of three years of its appointment, the activities of the Commission during that period and report to the Legislative Assembly and the Minister as to further action that should be taken in relation to the Act or the functions, powers and operations of the Commission.\(^\text{85}\)

It is observed that the annual report of the Commission which is required to be made to the Minister and tabled in the Legislative Assembly pursuant to Section 7.10 of the Act, is another important mechanism in ensuring accountability.

In these ways, the legislature has also ensured that the Commission is independent of executive controls, in accordance with the underlying philosophy of the Fitzgerald Report.\(^\text{86}\)

\(^{82}\) ibid, s.4.8(1)(b)

\(^{83}\) ibid, s.4.8(1)(c)

\(^{84}\) ibid, s.4.8(1)(d)

\(^{85}\) The Act, s.4.8(1)(f)

\(^{86}\) The Fitzgerald Report, p.307
There are numerous other provisions in the Act which ensure the accountability of the Commission.

Section 2.14(1), which has previously been referred to, is made subject to Section 2.18. It is this last mentioned provision which requires (with some limited exceptions concerned with courts and confidentiality) that any report of the Commission, signed by the Chairman, be furnished to the:

(a) Chairman of the Committee;

(b) Speaker of the Legislative Assembly; and

(c) Minister.

Such a report must be tabled in the Legislative Assembly and printed in accordance with that Section. Accordingly, it is available for public discussion and comment. The Report on Gaming Machine Concerns and Regulations was made under this section.

In addition, the Commission has issued the following information/issues papers:

- Reforms in Laws Relating to Homosexuality;
- SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry;
- Review of Prostitution – Related Laws in Queensland;
- The Jury System in Criminal Trials in Queensland.

The first of these papers was submitted to the Parliamentary Committee.

As appears from the section of the submission with respect to the preparation of research reports, the Commission's preferred approach is to invite submissions from interested parties and the public generally in response to its issues papers. Following upon this, the Parliamentary Committee may, as it has already done, hold public hearings on the issue before making its own recommendations to Parliament.

In this way, the Commission comes into the public arena and raises issues for public debate, as an integral part of a process of ensuring a more informed approach to the introduction of legislation pertinent to the criminal justice system, than has existed in the past.

Judicial review

The statutory requirements to afford accountability include a superintendence by the Supreme Court in many aspects of the Commission's operation, and in particular, the exercise of its statutory powers. The exercise of these powers is referred to in the next section. For the present purposes, reference is made to:
Section 2.25 which allows a person who claims:

(a) that an investigation by the Official Misconduct Division is being conducted unfairly;

or

(b) that the complaint or information on which an investigation by the Official Misconduct Division is being, or is about to be conducted, does not warrant an investigation,

to make application to a judge of the Supreme Court for an order in the nature of a mandatory or restrictive injunction addressed to the Director of the Official Misconduct Division.

There has so far been one such application made. It was unsuccessful.

Section 3.3, which requires an application to be made to a judge of the Supreme Court for the issue of a warrant to enter, search and seize under the Act;

Section 3.7, which requires that an application be made to a judge of the Supreme Court for approval to issue a notice under Section 3.1 or a notice of summons under Section 3.6, if the person on whom such a process would be served is under a duty or obligation imposed by an Act or law or oath taken to maintain confidentiality in relation to the subject matter of it.

Section 3.9 (read with section 5.4), which enables a person to make application to a judge of the Supreme Court, for the determination of a claim of:

(a) legal professional privilege;

(b) crown or other public interest privilege; or

(c) parliamentary privilege,

in respect of the subject matter of any notice under Section 3.1, notice of summons under Section 3.6, authority to enter public premises under Section 3.2, or a warrant under Section 3.3.

The section provides a person with a lawful excuse not to comply with such a process, if it is found by the Supreme Court that the claim of privilege is valid;

Section 3.11, requires an application to be made to a judge of the Supreme Court for a warrant to be issued, for the apprehension of a witness who fails to comply with section 3.8(1) of the Act;
Section 3.14, requires application to a judge of the Supreme Court for an order approving the use of a listening device;

Section 3.15(2) provides that information disclosed by use of a listening device used for the purposes of the Commission shall not be used for any purpose, including the investigation by the Commission in relation to which the judge's approval for use of the device was obtained, without the Chairman's approval or a further approval of a judge of the Supreme Court applied for and granted as prescribed;

Section 3.15(2) requires approval of a Supreme Court judge for an officer of the Commission:

(a) to take possession of passports, other travel documents, instruments of title to property, securities and financial documents found in the possession or control of persons concerned in an investigation by the Commission;

(b) to enter, at any time during business hours, on premises in which are to be found records of any bank or other financial institution, insurance company, stock and share broker, person engaged in a business of investing money on behalf of others, or of providing credit facilities, or person suspected of having a relevant association with a person to whom an investigation by the Commission relates and to inspect and make copies of, or extracts from, such records so far as they relate to the affairs of such last mentioned person;

(c) to require any person to furnish him one or more affidavits (on oath or affirmation) or statutory declarations relating to property of, financial transactions, or movements of money or other assets by a person holding an appointment in a unit of public administration or by any person associated with such a holder;

Section 3.32.1 enables the Commission to apply to the Supreme Court for an injunction against conduct or proposed conduct involving victimisation of a person who has given evidence or otherwise assisted the Commission;

Section 3.35 requires the Supreme Court to determine whether any person is guilty of a contempt of the Commission.

Section 2.38 enables an appeal to be brought, to a Judge of the Supreme Court, from a decision of a Misconduct Tribunal exercising original jurisdiction on the grounds of:

- denial of natural justice;
- error of law;
manifest excessiveness of penalty.

In addition, the Commission will be subject to the Supreme Court in any case in which a citizen seeks prerogative relief in respect of its actions, as in the Ainsworth case.

The Commission's actions and decisions will also be brought under public scrutiny on each occasion it is served with a subpoena to produce its documents to a Court.

Finally, in any case in which action is taken against a person in a Court or the Misconduct Tribunal as a result of a Commission investigation, its investigations and officers are subject to public scrutiny.

Direct Public Contact

Public Hearings

As previously stated the Commission's public hearings are another accountability mechanism. This was emphasised by Mr I Temby, the Chairman of the ICAC (NSW) in his evidence to the Parliament of NSW Committee on the ICAC Inquiry into Commission Procedures and the Rights of Witnesses, wherein he testified, in relation to that Commission's commitment to public hearings:

"They are important, indeed it may be said critically important, as an accountability mechanism."

The Commission's position is starkly in contrast with that of the NCA which was described by Mr. F Costigan Q.C. in a paper to the Labor Lawyers Conference in Brisbane on 22 September 1990, concerning "Anti-Corruption Authorities in Australia", as follows:

"Allied to this was a problem of secrecy. Secrecy was built into the Act to such an extent that no outsider, . . . was able to test the value and integrity of the work being done."

This Commission's public hearings and the other mechanisms to ensure that its work emerges into the public arena, means that this cannot be the case.

The Commission has also gone on the public record in responding to the various issues papers on a wide range of subjects pertinent to the administration of criminal justice, which have been referred to earlier in this submission.

Relations with the Media

The Commission's dealings with the media have not been without trauma, and in this the report of the Fitzgerald Inquiry contained some accurate prophecy.

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57 ICAC First Report, p.9; and Appendix 1, p.230

58 ibid, Appendix 1, p.101
"It may confidently be predicted that, since competing considerations have had to be balanced and subjective judgements formed, there will be scope for criticism which will be enthusiastically advanced, particularly by those whose interests would be better suited by some different approach, those experts who always find the tasks of others easy in the extreme, and those who simply denigrate as a matter of course all efforts other than their own." 89

Honest criticism and comment may on occasion be painful but the Commission recognises that society and its democratic institutions are best served by being well informed. There have been occasions however when organs of the media have been used or have allowed themselves to be used by some whose motives may be extremely questionable, occasions when factual truth has seemingly been an expendable quantity, one occasion indeed when a senior news executive maintained that "Fairness does not come into it (an advertised program relating to the Commission to which the Commission was not able to respond)." 90

Despite these disappointments, the Commission has a commitment to being as responsive to media queries as possible given legislative and operational requirements and some reasonable prudence. The Chairman has, quite frequently, made himself available to representatives of the media. Press releases have been issued where necessary. Monthly reports on the Commission's activities are being issued to the media, as well as the Minister, the Chairman of the Parliamentary Committee and leaders of the opposition parties in Parliament. Much of the reporting of criminal justice issues, including some critical of the Commission, has been responsible. Journalists have assisted with Commission inquiries and at least some have not made their assistance the subject of headlines.

However, there are some in the media who expect more than the Commission can legally or prudently provide. There are cogent reasons why Commission staff can not talk freely to the media; there are also cogent reasons why, with rare exceptions, current investigations or criminal intelligence can not be discussed publicly. Some journalists have found this difficult to comprehend.

The very existence of the Commission can be and has been used by some in society with a barrow to push, as was amply illustrated during recent local government elections. The Commission must receive and investigate all allegations of misconduct against members of the Police Service and official misconduct by persons holding appointments in units of public administration as defined in the Act; however the fact that a complaint has been made does not necessarily mean there has been any misconduct. This distinction between complaint and the existence of misconduct is significant, particularly to the individuals involved; it is one that media professionals should heed more than they have to date. Natural justice requires that those the subject of complaint should be given the benefit of any doubt until investigation has determined whether there is, in fact, any misconduct.


Difficult competing interests must be balanced in the Commission's relations with the media. However, on balance, the Commission is where possible committed to openness. Open public hearings may not always be well reported but they will still be held; controversial reports may meet a critical reception but they will still be issued.

**Direct Contact with the Public**

The Commission has an important role in public education on criminal justice issues. Some of that responsibility is discharged through open hearings, public reports and other interactions with the media and public. The Commission's staff have further subjected themselves to the public microscope by addressing a diverse range of groups. This has included tours throughout Queensland by the Chairman, the Director of Operations and officers of the Complaints Section, to explain the role and function of the Commission to those most affected by it, in particular police and local authorities. Senior staff of the Commission have delivered many public addresses and conducted seminars in relation to a broad range of criminal justice issues. On all occasions, the opportunity has been taken to invite questions.

**Accountability to Complainants**

As has previously been indicated in relation to the Complaints Section, the Director of the Official Misconduct Division is required by Section 2.24(4) to cause a response to be given to each complainant advising of the action taken (including where no action is taken) and the reason. The Commission has sought to improve on this by debriefing each complainant at the end of the interview.

This makes the Commission accountable to such complainant. In general the Commission will already have been in contact with the complainant through its established procedure of debriefing him/her in the first instance. Thus, the complainants are involved in the process throughout. Should they not be satisfied they are able to refer their concerns to the Committee. The Commission in turn will be required, by the Committee, in appropriate cases to explain its decision.

**Role of the Minister**

The Commission has been constituted to reflect Mr Fitzgerald’s Q.C. ideal of freedom of executive controls and primary accountability to Parliament.

The Act does however provide a role for the Minister (currently the Premier). This is in relation to the development of the infrastructure of the Commission and an obligation on the part of the Commission to provide certain information on its work, eg the Minister is to be furnished with a copy of certain categories of Commission Report including the Annual Report.

In addition he may receive a report on matters of criminal intelligence pertinent to the deliberations, policies and projects of the Government.\(^{91}\)

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\(^{91}\) The Act, s.2.46 (2)(c)
Although not required by the Act, the Premier also receives a monthly written report and occasional oral briefings from the Chairman. The monthly report is also provided to the leaders of opposition parties in the Legislative Assembly.

CONCLUSION

The Commission's attitude to accountability is perhaps best illustrated by its response to EARC issues papers on Freedom of Information and Judicial Review of Administrative Decisions and Actions. The tenor of the Commission's public submissions (which have previously been adverted to) is found in paragraph 23 of its Freedom of Information paper:

"It is the submission of this Commission that the balance between the desirable aims of the Freedom of Information legislation and the need for confidentiality concerning certain activities of this Commission can be found not by way of blanket exemption but by a carefully drafted provision which enables each request for information to be dealt with on an individual basis. This will permit the security considerations outlined in this submission to be given proper regard.

Indeed, the Commission would consider itself to be probably more open to scrutiny than any like agency or official. As such, it satisfies the ideal expressed in the Report (at p.307):

"The administration of criminal justice should be independent of executive controls. It is an apolitical, vital public function. Such administration must be accountable for its activities and should be open to public review and accountable to the Parliament."
SECRECY

The issue of secrecy is closely linked with that of accountability. Indeed the two terms appear in conjunction with each other in the committee's call for public submissions.

As appears from the section on "Accountability" the Commission considers itself to be an open and accountable body.

However, Section 6.7(1) of the Act makes it an offence for any Commissioner or officer of the Commission to wilfully disclose, except for the purposes of the Commission, or the Act, information that has come into the possession of that person or the Commission in the course of his/her duties. Section 6.7(2) places a member of the Committee, in the same position, in relation to the disclosure of information that has come to his/her knowledge because of Committee membership, unless the disclosure is in discharge of a function of the Committee under the Act or is contained in a report of the Commission which has been ordered (or deemed to be) by the Legislative Assembly to be printed.

A person convicted of such an offence is liable to a penalty of 85 penalty units, or to imprisonment for 12 months, or both.

The Commission agrees with the philosophy of this provision which enables it, in appropriate cases, to ensure that the public disclosure of information, does not among other considerations:

- prejudice the fair trial of a pending or future criminal charge;
- irreparably damage the reputation of any person;
- prejudice the career of any person;
- prejudice an informant or protected witness by revealing his/her identity or whereabouts;
- endanger the safety of any other person;
- prejudice ongoing investigations;
- give a person, the subject of allegations, the opportunity to abscond, approach witnesses or tamper with evidence;
- cause a person to be subjected to pressure, because he/she is revealed as a potential witness;
- provide a window into the investigation for the corrupt.

These are the same matters that the Commission takes into account in determining whether to hold public or private hearings.
It also enables appropriate confidentiality to be provided to intelligence information acquired by the Intelligence Division pursuant to its function under Section 2.47(2)(a) of the Act.

As has been indicated elsewhere in this submission, the Commission has entered into Memoranda of Understanding with the ABCI and the SDCC to facilitate, amongst other things the exchange of intelligence. Some of this information is necessarily furnished to the Commission, subject to restrictions on its dissemination. It is essential that the Commission be able to honour such caveats and retain a trusted relationship with such agencies. It should be noted that Section 2.47(2)(a) ensures that the Commission will disseminate intelligence information, if it considers it appropriate to the discharge of its functions and responsibilities to do so.

As was stated in the section on "Accountability", the Commission's attitude to the disclosure of its information, is well demonstrated by its submission to EARC on "Freedom of Information" and "Judicial Review of Administrative Decisions and Actions".

Section 6.7 ensures that the Commission is not afflicted with the excessive secrecy required of the NCA, which must hold all of its hearings in private.

Indeed, relations between the NCA and its Parliamentary Committee were initially somewhat strained through difficulties arising from the National Crime Authority Act 1984.

Disputes centred on the desire on the part of the Committee to assert its right to have access to details of current operations. The Committee members took the view - understandably - that they could not really "monitor or review" the activities of the NCA without such information.

The Authority for its part, in the absence of specific provisions binding Committee members to secrecy, argued that it would be acting irresponsibly in disclosing such material. It foresaw impediments to investigations and risks to operatives and others in the event of such material becoming public.

This experience was the origin of the provision which is now Section 6.7(2) of the Act, the existence of which has made for a much easier relationship between the Commission and its Committee. The Commission has maintained full and frank disclosure of its activities, subject to the needs of operational security.

It is clearly undesirable that current 'operational' information should be disseminated on any other than a need-to-know basis. However, once an operation is completed there can be no objection to the most detailed scrutiny by the Committee of the way it was done.

Accordingly, all Commission investigations (including Complaints Section files) will be available to the Committee upon the completion of an investigation. This will further enhance the accountability of the Commission through the Committee to the Parliament and people of Queensland.
In conclusion, the Commission considers that Section 6.7 strikes an appropriate balance between the disclosure of information in its possession and the necessity for confidentiality.
EXERCISE OF STATUTORY POWERS

The exercise of the Commission's statutory powers has been referred to throughout this submission.

In particular reference has been made to the many powers, the exercise of which is subject to the supervision of the Supreme Court.

In all cases, there are clear requirements which must be satisfied before the powers are exercised.

These powers can only be exercised by or on the authorisation of the Chairman or his delegate (with the exception of the use of a listening device in accordance with the approval of a judge of the Supreme Court and the use of information disclosed by any such device, where only the Chairman can give the required authorisation/approval, Section 3.14(1) and 3.15(2) of the Act).

In accordance with Section 7.2(1) of the Act, the Chairman's only delegates in relation to the exercise of these powers are the current Director of the Official Misconduct Division and General Counsel on any occasion that he acts as such Director. The Commission has followed the policy that these delegations only be exercised when the Chairman is absent from the Commission, or otherwise unavailable and the exigencies of the circumstances require it.

As has previously been stated, to ensure accountability, none of these statutory powers is to be exercised unless documentation is completed, setting out the reasons for doing so and these reasons are accepted by the person exercising the power. Thus, a permanent record is created of any such decision.

Reference is now made to some facts about the exercise of some of these statutory powers.

Notices to Produce Information and Records (Section 3.1)

During the 1990 calendar year, the Commission issued 104 notices pursuant to that section. As at 12 April 1991, the Commission had issued 131 such notices this year.

Total 235

Notices of Summons (Section 3.6)

These require a person to attend before the Commission (including the Misconduct Tribunals) to give evidence in relation to the subject matter of a Commission investigation, and to produce any specified record or thing in that person's custody or control. During the 1990 calendar year, 85 summonses were issued by the Commission pursuant to that section. As at 12 April 1991, 188 summonses had been issued this year.

Total 273
Hearings (Section 2.17)

Notices of summons are issued to secure the attendance of witnesses before Commission hearings.

The Commission is empowered to conduct a hearing in relation to any matter relevant to the discharge of its functions or responsibilities (Section 2.17(1)), including those allocated to the Official Misconduct Division. Reference has already been made of the guidelines adopted by the Commission to ensure procedural fairness in both public and private hearings.

During the 1990 calendar year, the Commission conducted 12 hearings of which 11 were closed hearings. As at 12 April 1991, the Commission had conducted 17 hearings this year of which 14 have been closed hearings.

Total 29 Hearings (4 Public)

Of the persons summoned, 238 had given evidence at Commission hearings to 12 April 1991.

A further public hearing commenced on 16 April 1991.

As previously stated, a report is made under Section 2.18(1) of the Act in respect of each public hearing.

It is relevant that all hearings conducted in respect of an investigation by the Official Misconduct Division are subject to the additional safeguard of an application to the Supreme Court for an injunction under Section 2.25 of the Act on the basis that:

(a) it is being conducted unfairly;

or

(b) the complaint or information on which the investigation is being, or is about to be conducted, does not warrant an investigation.

Any such application must be made in accordance with the specific procedures laid down by Section 5.2 of the Act.

As previously mentioned, the only such application to date has been unsuccessful.

Authority to Enter Public Premises (Section 3.2)

The powers given to the Commission under the section, do not apply to premises occupied or used by, or for the purpose of, any court.

During the 1990 calendar year, 9 authorities were issued pursuant to the section and, as at 12 April 1991, 5 such authorities have been issued this year.

Total 14
Search Warrants (Section 3.3)

The extent of the authority of the person executing the warrant is specified in Sections 3.4 and 3.5 of the Act. However, no application has been made to the Supreme Court for the issue of such a warrant.

Claim of Privilege (Section 3.9)

As has previously been stated, the powers given by Sections 3.1, 3.6 or 3.2 of the Act are not unlimited but are subject to the claim of privilege on the following grounds:

(a) Legal professional privilege;
(b) Crown privilege or other public interest; or
(c) Parliamentary privilege.

If privilege is claimed, the person who makes it has a lawful excuse for non-compliance with the notice, summons or authority. The Act sets out in Section 5.4 a procedure which must be followed when a claim of privilege is made. Such a claim will be determined by a judge of the Supreme Court and the costs of any such application shall be borne by the Commission, unless otherwise ordered by the judge on the ground that the claim is frivolous or vexatious: see Section 5.4(3) of the Act.

To date, no claim of privilege under Section 3.9 of the Act has been made.

Section 3.10 of the Act sets out in detail the procedures which must be followed if such a claim is made in relation to any record in respect of which a person seeks to exercise an authority under Section 3.2 or execute a search warrant under Section 3.3 of the Act.

To enhance this, the Commission of its own initiative is developing procedures and protocols for the execution of any search warrant on a solicitor’s office on the basis of the search warrant guidelines which were agreed between the Australian Federal Police and the Law Council of Australia on 7 June 1990.

Restriction on Disclosure of Confidential Information
(Section 3.7)

As previously indicated, this provision requires that an application be made to a judge of the Supreme Court for approval to issue a notice under Section 3.1 or a notice of summons under Section 3.6, if the person on whom such a process would be served is under a duty or obligation imposed by an Act or law or oath taken to maintain confidentiality in relation to the subject matter of it. The application is to be made in accordance with the specific procedure laid down by Section 5.3 of the Act.

The disclosure of confidential information in such circumstances does not render the person who disclosed it liable to any criminal or disciplinary action: see Section 3.31 of the Act.

No situation has yet arisen requiring prior judicial approval of the issue of the relevant notice to produce or notice of summons.
Apprehension of a Witness (Section 3.11)

Section 3.11 requires an application to be made to a judge of the Supreme Court for a warrant to be issued, for the apprehension of a witness who fails to comply with Section 3.8(1) of the Act.

The extent of the authority and procedure in respect of such a warrant is specified in Section 3.12 of the Act.

Attendance of Prisoner or Patient Before the Commission (Section 3.13)

Where the attendance before the Commission of a prisoner or a patient detained in a hospital pursuant to the Mental Health Services Act 1974-1989 is required for the purposes of the Commission, the Commission may direct such attendance by giving notice to the general manager of the correctional centre or the appropriate hospital administrator: see Section 3.13 of the Act.

As at 12 April 1991, the Commission issued 37 notices to prisoners in the care and custody of the Corrective Services Commission. To date no such notice has been issued by the Commission to a patient under the Mental Health Services Act.

Authority to Use Listening Devices (Section 3.14)

Section 5.5 of the Act lays down a specific procedure for an application to the Supreme Court for such an authority.

However, no such application has been made to date.

Further Powers of Commission Officers (Section 3.16)

This provision has also been previously referred to. A specific procedure for such an application to the Supreme Court is found in Section 5.6 of the Act.

Again, no such application has been made.

CONCLUSION

Against this background, the Commission rejects the reported criticisms of the extent of its statutory powers. Those powers which it does possess are essential for the effective and efficient discharge of its responsibilities as the paramount agent for the process of reform in the administration of criminal justice and the reduction in public maladministration and misconduct. They are also vital to the taking of effective measures to combat organised and major crime in circumstances where this is not appropriate to be done or cannot effectively be done by the Queensland Police Service.

It may be that the criticisms of the Commission's powers arise from a failure to appreciate the extent of judicial supervision imposed in respect of them and the internal mechanisms
that the Commission has developed of its own volition to ensure accountability in respect of their exercise.

It is also notable that the powers vested in the Commission by the Act are substantially less extensive than those recommended in the Fitzgerald Report at pp 313–314.

The Commission submits that the current powers are appropriate and exercised with due regard to the constraints imposed upon them by the Act.

It will suggest in the separate report dealing with amendments, that some of them need fine tuning and clarification as a result of experience to date. However, this will not be a request for extra powers.
ANNEXURES
GUIDELINES AND DIRECTIONS ISSUED BY THE CRIMINAL JUSTICE COMMISSION TO THE COMMISSIONER OF THE QUEENSLAND POLICE SERVICE PURSUANT TO THE CRIMINAL JUSTICE ACT 1989-1990

ON 20 JULY, 1990

The Criminal Justice Commission repeals the guidelines issued on 4 May, 1990 to the Commissioner of the Queensland Police Service (referred to in this document as the Commissioner) under the Criminal Justice Act 1989-1990 and issues the following guidelines and directions under that Act:-

1. Matters investigated and disposed of before 22 April, 1990. The Commissioner shall not refer to the Commission complaints of, or matters involving suspected misconduct by members of the Police Force investigated by members of the Police Force and disposed of before 22 April, 1990 unless he believes that any such matter -

(a) involves official misconduct or a criminal offence; and

(b) has not been disposed of in an appropriate manner,

in which case he shall furnish to the Commission, as soon as is practicable, all information relevant to the complaint or matter.

2. Matters under investigation but not disposed of before 22 April, 1990. The Commissioner shall not refer to the Commission complaints of, or matters involving, suspected misconduct by members of the Police Force that, immediately before 22 April, 1990 -

(a) had been investigated by members of the Police Force but not disposed of; or

(b) were being investigated by members of the Police Force,
unless he believes that any member of the Police Force may be guilty of official misconduct or a criminal offence, in which case he shall furnish to the Commission, as soon as is practicable, all information relevant to the complaint or matter.

3. **Minor matters of complaint.** (1) The Commissioner shall investigate, determine, and where appropriate take disciplinary action in respect of, all complaints of, or matters involving, suspected misconduct of a minor nature by members of the Police Force -

(a) that are referred to him by the Commission; or

(b) that come to his notice from any other source unless, in any such case, the Commission requests that the complaint or matter be referred for its determination.

(2) As soon as is practicable after making his determination in respect of any complaint or matter of a minor nature referred to him by the Commission, the Commissioner shall notify the Commission of that determination and of any disciplinary action taken or to be taken against any member of the Police Force.

(3) Nothing in this clause affects the duty imposed on any officer or staff member (within the respective meanings of those terms in the Police Service Administration Act 1990) by section 7.2 of that Act to report the occurrence of misconduct to the Complaints Section of the Official Misconduct Division.

4. **Commissioner to investigate serious complaints in certain cases.** (1) The Commissioner shall investigate any complaint of, or matter involving, suspected misconduct by a member of the Police Force -

(a) if required to do so by the Commission, in which case he shall investigate the complaint or matter in accordance with any directions given by the Commission; or
(b) if he believes such investigation to be necessary in order to obtain evidence that the Commission would not otherwise be able to obtain or would not readily be able to obtain.

(2) As soon as is practicable after investigating any such complaint or matter, the Commissioner shall furnish to the Commission, all information relevant to the complaint or matter.

SIR MAX BINGHAM Q.C.
Chairman
GUIDELINES ISSUED BY THE CRIMINAL JUSTICE COMMISSION TO THE
COMPLAINTS SECTION, OFFICIAL MISCONDUCT DIVISION.

PURSUANT TO THE CRIMINAL JUSTICE ACT 1989-1990

ON 5TH OCTOBER, 1990

Pursuant to section 2.29 of the Criminal Justice Act 1989-1990
the Criminal Justice Commission issues the following
guidelines in respect of the discharge by the Complaints
Section and the Chief Officer, Complaints Section, Official
Misconduct Division of the functions imposed by that section:

1. Interpretation. In these guidelines, unless a contrary
intention appears -

"Chief Officer" means the Chief Officer of the Complaints
Section;

"complaint" means a complaint or information concerning
suspected misconduct furnished to the Complaints Section
of the Official Misconduct Division from any source,
including any anonymous source; the term includes any
matter involving suspected misconduct referred to the
Complaints Section;

"Director" means the Director of the Official Misconduct
Division.

2. Where further action by Commission not desirable. If,
upon assessing the substance of any complaint, the Chief
Officer determines that no further action by the Commission is
necessary or desirable in respect of the complaint, the Chief
Officer shall dismiss the complaint.

3. Complaints against police not constituting official
misconduct. If, upon assessing the substance of any
complaint against a member of the Police Service, the Chief
Officer determines that the conduct complained of, if
substantiated, would not constitute official misconduct but
would constitute sufficient cause for the taking of
disciplinary action for misconduct or a breach of discipline,
he shall cause the complaint to be referred to the
Commissioner for such investigation and disciplinary action as
the Commissioner considers appropriate.

4. Complaints against persons in units of public
administration not constituting official misconduct. If,
upon assessing the substance of any complaint against a person
who holds an appointment in a unit of public administration
other than the Police Service, the Chief Officer determines
that the conduct complained of, if substantiated, would not
constitute official misconduct but would constitute sufficient
cause for the taking of disciplinary action against the
person, he shall cause the complaint to be referred to the
principal officer of the unit of public administration for
such investigation and disciplinary action as the principal
officer considers appropriate.

5. Chief Officer not required to report to the Director in
certain cases. (1) Where the Chief Officer dismisses a
complaint pursuant to clause 2 or causes a complaint to be
referred to the Commissioner or other principal officer
pursuant to clause 3 or 4, then, notwithstanding section
2.29(c), he is not required to submit the complaint or make
observations thereon to the Director, unless the Director
otherwise directs.

(2) In any such case the Chief Officer shall keep appropriate
records concerning the complaint, including his assessment
thereof.

SIR MAX BINGHAM Q.C.
Chairman
GRAPH 4(a) – FULL WORDING OF OUTCOMES

Not in Jurisdiction

Frivolous

Vexatious

Insufficient Evidence

No Evidence

Referred/to be referred to Misconduct Tribunals

Referred to Principal Officer (other than Commissioner QPS)

Referred to Commissioner QPS to investigate minor misconduct or breach of discipline

Recommend to Commissioner QPS criminal charge

Recommend to Commissioner QPS disciplinary action for misconduct or breach of discipline

Recommend to Commissioner QPS counselling

Referred to Director of Prosecutions

Referred to Other Prosecution Authority

Referred to Other Agency

Other
Types of Allegation

Assaults
- Common
- Serious
- Weapon

Behaviour
- Incivility, Verbal Abuse, Aggression
- Incivility / Verbal Abuse / Aggression
- Intoxication
- Inconsiderate

Corruption, Favouritism
- Receipt of Monies
- Giving Favourites / Bias
- Gaining Advantage

Drugs
- Protection
- Direct Involvement
- Planting
- Misappropriation
- Cultivation

Evidence
- Fabrication of, inc. Verballying, Perjury, etc.
- Improperly Obtaining
- Destruction / Tampering with

Firearms
- Display of
- Discharge of

Goods and Property
- Wrongful Seizure
- Failure to Return
- Damage to Seized Property
- Improper Use of Property of Unit of Public Administration

Harassment
- Threats
- Excessive Attention
- Sexual

Information Breaches
- Disclosure of Confidential
- Refusal to Disclose
- Giving Incorrect

Dealings With: Juveniles / Disabled / Aborigines
- Conduct of Interview
- Wrongful Detention

Custody Matters
- Refusal of Legal Representation
- Refusal to Provide Necessities / Medical Attention
- Refusal to Allow Contact

Failure to Perform Duties
- To Investigate / Properly Investigate
- By Police to Report Offence
- Failure to Identify (Name, station, Reg No. etc.)
- Not performing statutory duty

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| Victimisation           | Victimisation of whistleblowers complainants |

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| Zoning/Development                |                            |

| Miscellaneous                      |                            |
1. Short title. These regulations may be cited as the Misconduct Tribunals Regulations 1990.

2. Commencement. These regulations shall commence on ................ 1990.

3. Interpretation. In these regulations unless the contrary intention appears -
   
   "Director" means the Director of the Official Misconduct Division for the purposes of the Act;
   
   "notice of charge" means the writing referred to in section 2.40 of the Act;
   
   "parties" means -
   
   . in the original jurisdiction, the person initiating the charge and the prescribed person;
   
   . in the appellate jurisdiction, the appellant and the person whose decision is the subject of the appeal;

   "Registrar" means the Registrar of the Misconduct Tribunals appointed by the Chairman of the Criminal Justice Commission and shall include any person temporarily performing the duties of the Registrar;

   "the Act" means the Criminal Justice Act 1989 - 1990 and expressions used in the regulations that are defined in the Act have the respective meanings assigned to those expressions by the Act.

4. Forms. (1) The forms set forth in the Schedule hereto or adaptations thereof shall be used for the purposes for which they are respectively applicable.

   (2) A form prescribed by these regulations shall be completed in accordance with the directions as are specified in the prescribed form.

   (3) In these regulations a reference to a form by number is a reference to the form in the Schedule hereto which bears that number.

5. Form of Originating Documentation. (1) Every charge of a disciplinary nature of official misconduct shall generally conform with Form 1.

   (2) Every appeal to review a decision made in respect of a disciplinary charge of misconduct shall generally conform with Form 2.
6. Venue. Unless a Misconduct Tribunal orders otherwise, proceedings before a Misconduct Tribunal shall be heard at a place fixed by the Registrar.

7. Constitution of Tribunals. The nomination by the Chairman of a member of the panel established and maintained pursuant to section 2.32 of the Act for the purpose of hearing and determining a particular matter or group of matters shall be in Form 3 and that such document is, in any proceedings prima facie evidence of the facts therein.

8. Service on prescribed person. For the purpose of section 2.42 of the Act, proof that the prescribed person against whom a charge is made has been served shall be by way of affidavit of service in Form 4 and lodging it with the Registrar and serving a copy on the Director.

9. Statement setting out findings. (1) A person whose decision is the subject of appeal to a Misconduct Tribunal shall, within 28 days after being served with a copy of the notice of appeal lodge with the Registrar three copies of a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(2) Upon the lodging of the statement referred to in subregulation (1), the Registrar shall forthwith cause a copy to be sent to the appellant or his or her solicitors.

(3) Where a Misconduct Tribunal considers that a statement referred to in subregulation (1) does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for a decision, the Misconduct Tribunal may order that the person whose decision is subject of appeal lodge with the Registrar, within a time specified in the order, an additional statement or additional statements containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.

10. Date of hearing. (1) The member of the panel nominated by the Chairman pursuant to the Act for the purpose of hearing and determining a particular matter or group of matters may convene a sitting of a Misconduct Tribunal to fix a date and time of hearing and give such directions as the Tribunal sees fit.

(2) The Registrar shall advise the respective parties and the Director of the date, time and place of the hearing.

(3) For the purposes of subsection 4 of section 2.43 of the Act, the Registrar may certify in Form 5 that the
prescribed person has been notified of the date, time and place of the proceedings, and that such certificate is, in any proceeding prima facie evidence of the facts therein.

11. (1) Custody of Records. The Registrar shall have the custody of all records of the Misconduct Tribunals, and of all documents, exhibits and things lodged with or received by the Commission in relation to a proceeding before a Misconduct Tribunal.

(2) Date upon documents lodged. Upon every such document lodged the Registrar shall cause to be recorded the date the document was lodged.

(3) Certificate of Registrar. Upon the determination by a Misconduct Tribunal:-

(a) of every charge of a disciplinary nature of official misconduct, the Registrar shall cause to be issued a certificate in Form 6, a copy of which shall be forwarded to the parties and to the Director.

(b) of a review of a decision in respect of a disciplinary charge of misconduct, the Registrar shall cause to be issued a certificate in Form 7, a copy of which shall be forwarded to the parties and to the Director.

(4) Seal. The Registrar shall keep a seal which shall bear the words "Criminal Justice Commission Misconduct Tribunals".

(5) Register of documents lodged and proceedings taken. The Registrar shall cause to be kept and maintained an original jurisdiction register and an appellate jurisdiction register and enter in each register documents lodged and particulars of proceedings taken.

(5) Return of documents etc. at the completion of proceeding. Where -

(a) a proceeding in the original jurisdiction of a Misconduct Tribunal has concluded and the time within which an appeal from the decision pursuant to section 2.38 of the Act may be instituted has expired but no such appeal has been instituted;

(b) a proceeding in the appellate jurisdiction of a Misconduct Tribunal has concluded;

the Registrar may cause a document or any exhibit furnished to a Misconduct Tribunal for the purpose of a proceeding to be returned to the person by whom it was furnished.
12. **Allowances to witnesses.** A person required by a Misconduct Tribunal to attend before it, and who does so attend, is entitled to be paid a sum on account of his or her expenses of attendance in accordance with the schedule for allowances to prosecution witnesses and interpreters attending Supreme, Circuit and District Courts in their respective criminal jurisdictions etc. as approved from time to time by the Governor in Council and published in the Government Gazette.

13. **Notice of Abandonment.** A person who initiated a matter -

(1) in the original jurisdiction may at any time after he or she has served the notice of charge abandon the charge by giving notice of abandonment in Form 8 to the prescribed person against whom the charge is made and in any case to the Registrar, and the charge shall thereupon be treated as having been dismissed;

(2) in the appellate jurisdiction may at any time after he or she has served the notice of appeal abandon the appeal by giving notice of abandonment in Form 9 to the person whose decision is the subject of the appeal and in any case to the Registrar, and the decision under review shall thereupon be treated as having been affirmed.
SCHEDULE

Form 1

In a Misconduct Tribunal exercising original jurisdiction
Criminal Justice Commission
Queensland

(Here put the Number) of 19

NOTICE OF CHARGE

(Here put name of person initiating charge) -v- (Here put name of person charged)

To the Director of the Official Misconduct Division,
Brisbane.

Take notice that I, A.B. (here put name of person initiating charge) being the (state position held etc.) hereby initiate a matter in the original jurisdiction of a Misconduct Tribunal by charging C.D. (here put name and address of person charged) with a disciplinary charge of official misconduct and request that the said C.D. be dealt with as provided by the Criminal Justice Act 1989 - 1990.

Particulars of the charge are as follows:-

1. State position held by person charged at time of alleged official misconduct:

2. Date and time alleged official misconduct occurred:

3. Place where alleged official misconduct occurred:

4. Particulars of official misconduct alleged:

DATED this day of 19.

Signature of person initiating charge.

Address for Service:
(State address and telephone number of person initiating charge or his solicitors as the case may be)
Form 2

In a Misconduct Tribunal
exercising appellate jurisdiction
Criminal Justice Commission
Queensland

NOTICE OF APPEAL

(Here put name of appellant) -v- (Here put name of person whose decision is the subject of the appeal)

To the Director of the Official Misconduct Division,
Brisbane.

Name of appellant:

Particulars of disciplinary charge of misconduct for which a review is sought:

Penalty imposed:

Date decision to be reviewed was announced:

Particulars of order sought:

I, the abovemenamed appellant hereby give you notice that I desire to appeal to a Misconduct Tribunal to review the above decision in respect of a disciplinary charge of misconduct on the following grounds:

DATED this day of 19

Signature of Appellant

Address for Service:

(State address and telephone number of appellant or his solicitors as the case may be)
CRIMINAL JUSTICE ACT 1989 - 1990

NOTICE OF NOMINATION

WHEREAS by section 2.35(1)(a) of the Criminal Justice Act 1989-1990 (the Act) it is enacted that a Misconduct Tribunal shall be constituted by one member of the panel nominated by the Chairman of the Criminal Justice Commission (the Commission) for the purpose of hearing and determining a particular matter or a group of matters, assigned to that Tribunal by the Chairman.

AND WHEREAS pursuant to section 2.32 of the Act (insert name of member of the panel) was on (insert date of appointment) duly appointed a member of the panel of the Misconduct Tribunals AND WHEREAS pursuant to section 2.33 of the Act the term of the said appointment be for a period of three (3) years.

NOW therefore I, _______________________________ being the Chairman of the Criminal Justice Commission as defined by section 1.4 of the Act, do by this notice nominate the said (insert name of member of panel nominated) to constitute a Misconduct Tribunal for the purpose of hearing and determining (insert here name of particular matter or group of matters, as the case may be).

DATED this __________ day of __________ 19__

__________________________
Chairman
Form 4

In a Misconduct Tribunal (Here put the number of 19)
exercising original jurisdiction
Criminal Justice Commission
Queensland

AFFIDAVIT OF SERVICE

(Here put name of person initiating charge) -v- (Here put name of person charged)

I, (full name) of (address), do swear that on the (day) day of (month), 19 , I served the within named (person named in notice of charge) with the within notice of charge by:

* (a) delivering the said notice of charge to (person named in notice) personally at (address of service);

* (b) leaving the said notice of charge at (address of service), the residential/business** address of (person named in notice) last known to the Commission;

* (c) sending the said notice of charge by pre-paid post to (address of service) the residential/business** address of (person named in notice) last known to the Commission;

Signed and Sworn by the

said Deponent at

this ____ day of

19 ___, before me: (full name)

(Signature of Justice of the Peace)

* complete if applicable/cross if inapplicable

** strike out if inapplicable
In a Misconduct Tribunal exercising original/appellate ** jurisdiction
Criminal Justice Commission
Queensland

CERTIFICATE OF NOTIFICATION

(Heading as in Form 1 or Form 2) as the case may be

This is to certify that I did on (day) of (month), 19 , notify (the prescribed person) by:

* (a) sending a copy of the attached letter by pre-paid post to (address of service), the residential/business** address of the said (prescribed person) last known to me;

* (b) telephoning the said (prescribed person) on (telephone number) and advising that proceedings before a Misconduct Tribunal would be held on (date, time and place of the proceeding).

DATED this day of 19 .

Registrar, Misconduct Tribunals

* Complete if applicable/omit if inapplicable

** Omit if inapplicable
Form 6

In a Misconduct Tribunal exercising original jurisdiction
Criminal Justice Commission
Queensland

(Here put the Number) of 19

CERTIFICATE OF REGISTRAR

(Heading as in Form 1)

Upon consideration being had by a Misconduct Tribunal exercising original jurisdiction as duly constituted by (name member of panel) under the Criminal Justice Act 1989-1990 for investigating and determining a charge of a disciplinary nature of official misconduct

(here set out particulars of the charge)

the said Misconduct Tribunal this day does finally determine the said charge and does order that

(here set out particulars of the order made).

DATED this day of 19

Registrar,
Misconduct Tribunals

Copy to:

☐ Director of the Official Misconduct Division

☐ person who initiated charge

☐ the person charged
In a Misconduct Tribunal (Here put the Number) of 19 exercising appellate jurisdiction
Criminal Justice Commission
Queensland

CERTIFICATE OF REGISTRAR

(Heading as in Form 2)

Upon consideration being had by a Misconduct Tribunal exercising appellate jurisdiction as duly constituted by (name member of panel) under the Criminal Justice Act 1989-1990 to review a decision made in respect of a disciplinary charge of misconduct

(Here set out the disciplinary charge of misconduct and the decision sought to be reviewed)

the said Misconduct Tribunal this day does finally review the said decision and does order that

(Here set out particulars of the order made).

DATED this day of 19

Registrar,
Misconduct Tribunals

Copy to:

☐ Director of the Official Misconduct Division

☐ the appellant

☐ the person whose decision was the subject of the appeal.
In a Misconduct Tribunal (Here put the Number) of 19
exercising original jurisdiction
Criminal Justice Commission
Queensland

NOTICE OF ABANDONMENT

(Heading as in Form 1)

TO: C.D. (Here put name and address of person charged).

TO: Registrar of the Misconduct Tribunals, Brisbane.

Take notice that I, A.B. (here put name of person initiating charge) being the (state position held etc.) having initiated a matter in the original jurisdiction of the Misconduct Tribunals by charging C.D. with a disciplinary charge of official misconduct (here set out particulars of charge) and requested that the said C.D. be dealt with as provided by the Criminal Justice Act 1989 – 1990 do hereby give you notice that I do not intend further to proceed with this charge before the Misconduct Tribunals and hereby abandon all further proceedings before the Misconduct Tribunals in regard thereto as from the date hereof.

DATED this day of 19 .

(the person initiating the charge) (Signature)
In a Misconduct Tribunal exercising appellate jurisdiction
Criminal Justice Commission
Queensland

NOTICE OF ABANDONMENT

(Heading as in Form 2)

TO: (Here put name and address of person whose decision is subject of the appeal.

TO: Registrar of the Misconduct Tribunals, Brisbane.

Take notice that I, (here put name of appellant) having initiated a matter in the appellate jurisdiction of the Misconduct Tribunals in respect of a disciplinary charge of misconduct (state particulars of disciplinary charge of misconduct and penalty imposed) do hereby give you notice that I do not intend further to proceed with the appeal, but I hereby abandon all further proceedings in regard thereto as from the date hereof.

DATED this day of 19

Appellant
(Signature)
Mr Chesterman QC expressed an opinion as to the approach which should be adopted on appeal against disciplinary sanction. This was that the Misconduct Tribunal ought to interfere with the sanction imposed by the Deputy Commissioner only in those cases where the decision making process is affected by error or the sanction is clearly disproportionate to the offence. It is a relevant consideration for the Tribunal that it is not engaged in the task of running the police service or maintaining discipline among its ranks. If the Tribunal were too willing to substitute its views for those of the Deputy Commissioner, his authority and that of the senior officers charged with the task of setting and maintaining appropriate standards for the service will be adversely affected. There is the further consideration that the notorious circumstances of the recent past make it necessary to be more severe than would otherwise be the case to eradicate slackness or lack of probity among police officers. It is necessary that a high standard be set by senior officers and that it be known that those charged with discipline are resolute to build and maintain an efficient police service.
QUEENSLAND POLICE SERVICE
COMMISSIONER'S CIRCULAR

DISTRIBUTED TO ALL POLICE ESTABLISHMENTS

ANNEXURE 5

HEARING OF APPLICATIONS TO REVIEW - PROCEDURE

1. General

The position of Commissioner for Police Service Reviews has been established pursuant to Part IX of the Police Service Administration Act 1990 and the Police Service (Review of Decisions) Regulations 1990.

The Commissioner for Police Service Reviews (hereafter referred to as the "Review Commissioner") is a member of the Criminal Justice Commission nominated by the Chairman of the Criminal Justice Commission. The Chairman has nominated Dr. Janet Irwin to be the Review Commissioner. An officer of the Criminal Justice Commission, Mr. Russell Kenzler, has been appointed Secretary to the Review Commissioner.

Decisions which may be reviewed by the Review Commissioner are set out in Regulation 5 of the above Regulations.

Parties to the review should ensure that they are familiar with Part IX of the above Act and Regulations.

2. Notice of application to review

An aggrieved officer may apply to have a decision reviewed on a Notice of Application to Review. A specimen Notice is attached.

The completed Notice along with any supporting submissions should be received by the Secretary within 14 days of the decision to be reviewed. It may be received by post, personally or by facsimile transmission.

The date of the decision shall be the date when the decision is communicated to officers which in the case of selection for promotion shall be the date that the police computer system carried the decision.

Where an officer is unable to submit an application within the 14 days prescribed, a request for an extension of time may be made to the Secretary. The request should set out clearly the grounds for the extension and be received within 14 days of the decision.
The Review Commissioner may grant such requests as are fair and just in all the circumstances.

The address of the Secretary to the Commissioner for Police Service Review is -

8th Floor
160 Ann Street
BRISBANE QLD 4000

P.O. Box 203
NORTH QUAY QLD 4002

Telephone: (07) 227-6193
Facsimile: (07) 221-5492

3. **Nature of review proceedings**

The nature of review proceedings is as follows -

(a) Normally all parties to the review will be present at the hearing, however, the Review Commissioner may decide in particular cases to use telephone conference facilities;

(b) Proceedings will be informal and simple;

(c) Legal representation is not permitted, however, parties to a review may chose to be assisted by a non-legal representative;

(d) Tape recording of the proceedings may be made for the exclusive use of the Review Commissioner, however, no transcript of proceedings will be made available to any other person; and

(e) In keeping with the simple and informal nature of the proceedings no witnesses are to be called by any party to the review.

At the expiration of the 14 days allowed for an aggrieved officer to apply for a review, the Secretary to the Review Commissioner, on receipt of an application to review (including any supporting submissions) shall forward a copy of the application and any supporting submissions to the other party/parties to the review and shall seek from the other party/parties to the review two copies of the submissions which the other party/parties to the review wish to place before the Review Commissioner.

This material is to be furnished within 14 days and may be delivered to the Secretary either personally, by post or by facsimile transmission.
On receipt of these submissions the Secretary shall forward a copy to the applicant. The exchange is to ensure that each party to the review has had an opportunity to consider the material of the other party/parties and therefore eliminate surprise.

While the time periods are not totally inflexible, it is expected that the parties will make every effort to adhere to them to ensure that delay is minimised.

It is anticipated that in the normal course a hearing before the Review Commissioner would be convened within one to two weeks of the exchange of submissions. Parties will be advised of this hearing date as early as possible to minimise any inconvenience. As this may be by telephone, parties are requested to provide a contact telephone number.

Submissions to the Review Commissioner should be concise and to the point addressing only those issues relevant to the decision under review.

4. **Hearing venue**

Unless advised otherwise the hearing will be conducted at the premises of the Public Sector Management Commission, 3rd floor, Executive Building Annex, 102 George Street, Brisbane.

Applicants requested to attend a review hearing should submit their claim for travelling expenses in the usual manner to the Queensland Police Service.

5. **Multiple applications**

In the case of multiple applications, the applicants will be heard in alphabetical order unless advised otherwise.

6. **Review hearing agenda**

This agenda may be varied as the Review Commissioner sees fit.

6.1 **Introduction**

The review hearing will commence with the Review Commissioner making some general remarks about the review process.

6.2 **Presentation of written submissions**

Submissions previously received will be taken as read unless the Review Commissioner indicates otherwise.

During this segment parties to the review may outline any clarifying aspects of their submissions in relation to the decision under review.
It is not intended that the parties will recite their written submissions.

The order of commenting will be -

(a) representative of the Commissioner of the Police Service;

(b) officer selected for the position, if relevant; and

(c) applicant.

6.3 Questions in relation to written submissions

Questions should be directed towards the clarifying of issues relevant to the decision under review.

In the case of applications to review a decision relating to promotion questions should be directed towards clarifying aspects of -

(a) the selection process; and

(b) the Department's comparative information about the merits of the applicant and the appointee resulting from the selection process.

In the case of applications to review a decision relating to disciplinary action, relevant questions may involve -

(a) the decision that has resulted in the action being taken; and

(b) the nature of the disciplinary action.

The order of questioning will be -

(a) representative of the Commissioner of the Police Service to the applicant;

(b) officer selected for the position to the applicant; and

(c) applicant to -

(i) representative of the Commissioner of the Police Service;

(ii) officer selected for the position, if relevant.

The Review Commissioner will ask questions freely as points arise and seek clarification of matters during the hearing.
6.4 Concluding comments

This segment is not intended as a summing up but as an opportunity to address any outstanding issues the parties have not had a chance to refute or comment upon during the hearing.

The order of commenting will be -

(a) representative of the Commissioner of the Police Service;

(b) officer selected for the position, if relevant; and

(c) applicant.

7. Recommendations

At the conclusion of the review the Review Commissioner will prepare written reasons for the recommendations to be made to the Commissioner of the Police Service. The reasons will be sent to the parties to the review. It is anticipated that this will occur within seven days of the conclusion of the review.

Note: Any documents that have been furnished to parties to the review either during the hearing or before are not to be copied or published and must be left behind at the conclusion of the review. Under no circumstances are documents supplied for the purposes of the review to be used for any other purpose.

Officers in Charge are to bring the contents of this circular to the notice of all members under their control.

[Signature]

D.L. BLIZZARD
DEPUTY COMMISSIONER
SUPPORT SERVICES
NOTICE OF APPLICATION TO REVIEW

Secretary: .................................................................
Telephone:  (07) 227 6193
Facsimile:  (07) 221 5492

SURNAME: .............................................................
GIVEN NAMES: ..........................................................
RANK: ................................................................. NUMBER: ..........................................................
ADDRESS FOR CORRESPONDENCE: ..........................................................

CONTACT TELEPHONE NUMBER: HOME - Work -

DATE OF BIRTH: ..........................................................
POSITION HELD: ................................................ LOCATION: ........................................
DATE OF DECISION: ..................................................
NATURE OF GRIEVANCE: *

NAME OF PERSON SELECTED (if relevant): ..................................................

GROUNDS TO HAVE DECISION REVIEWED: * (set out as concisely as possible)

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Signature of Applicant .................................................. Date ..................................................

* Attach page if insufficient space.

Once completed please forward to:- The Secretary for Police Service Reviews, P.O. Box 203, North Quay, Qld. 4002.; 8th Floor, 160 Ann Street, Brisbane.