

About the CMC

The Crime and Misconduct Commission (CMC) strives to protect Queenslanders from major crime and promote a trustworthy public sector.

Overview of the CMC

The CMC is an independent specialist agency set up to fight major crime and enhance public sector integrity in Queensland. Established under the *Crime and Misconduct Act 2001*, the organisation came into existence on 1 January 2002.

The CMC's active presence in our public life is a reassurance to Queenslanders that there is a vigilant independent body striving to ensure our public institutions are ethical and accountable, our police honest and efficient, our children safe, and our communities as free as possible from corruption and organised crime.

Our structure and accountability

The CMC is headed by a five-member Commission comprising the Chairperson (currently Mr Robert Needham), who is also the chief executive officer (CEO), and four part-time Commissioners who represent the community. Decisions made by the Commission are put into effect by the Executive Committee.

While independent of the government of the day, the CMC is fully accountable to the people of Queensland through the Parliamentary Crime and Misconduct Committee (PCMC), an all-party committee that monitors and reviews our activities and deals with complaints against us.

The CMC incorporates a breadth of professional expertise and experience.

Our Act mandates that the membership of the five-member Commission represent a depth of legal experience, demonstrated interest in civil liberties, and expertise in public sector management and review, criminology, sociology or relevant research, and that at least one member is a woman.

A similar range of expertise is represented in our staff. About 300 people work at the CMC, including lawyers, investigators, sworn police officers, social scientists, financial investigators, intelligence analysts, IT and surveillance specialists, administrators and support officers.

Figure 1 on page 7 is a representation of the CMC's structure and accountability. More information about our structure and governance can be found on pages 40–57.

The CMC Commission – membership at June 2008. A fourth part-time Commissioner will be appointed in 2008–09.



Chairperson
Robert Needham



Commissioner
Dr David Gow



Commissioner
Ann Gummow



Commissioner
Judith Bell

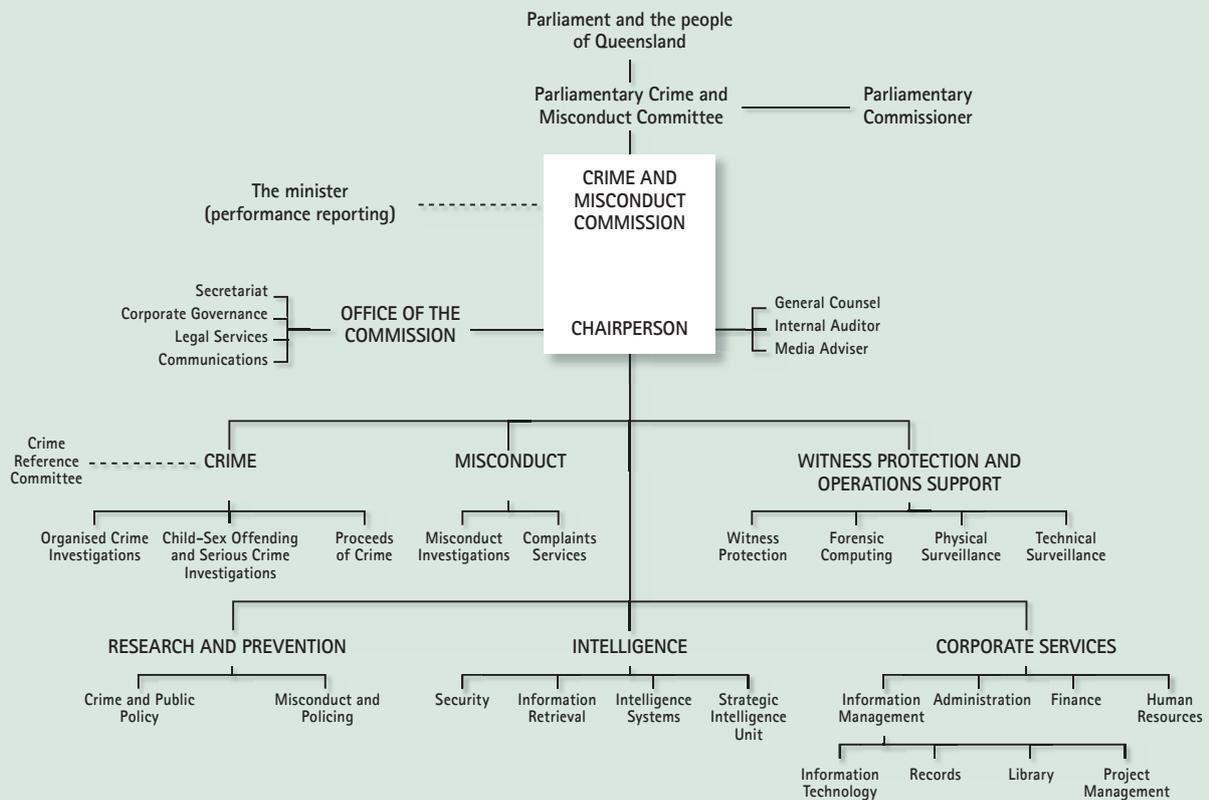
The Parliamentary Crime and Misconduct Committee as at 30 June 2008



Back row (left to right) Chair, Paul Hoolihan MP (Keppel); Deputy Chair, Howard Hobbs MP (Warrego); and Jack Dempsey MP (Bundaberg). Front row (left to right) Liz Cunningham MP (Gladstone); Dean Wells MP (Murrumba); Simon Finn MP (Yeerongpilly); and Christine Smith MP (Burleigh).

More information on the PCMC and its activities can be found on page 42.

Figure 1. CMC's structure and accountability



Major areas of activity

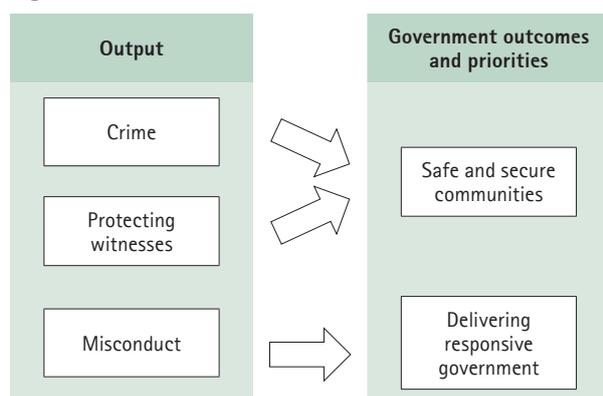
The CMC focuses on three main areas of activity, defined in our strategic plan for the period 2007–11 as 'outputs'.

These are:

- preventing and combating major crime
- promoting high standards of integrity and reducing misconduct in the public sector
- providing an effective witness protection service.

Our outputs contribute to *The Government's outcomes and priorities for Queensland* in 2007–08: 'Safe and secure communities' and 'Delivering responsive government', as illustrated in Figure 2.

Figure 2.



Preventing and combating crime

Our Crime staff work in partnership with the Queensland Police Service (QPS), the Office of the Director of Public Prosecutions and other law enforcement agencies to combat and prevent major crime, including organised crime, criminal paedophilia, serious crime and terrorism.

However, the CMC is not an alternative police service. We use our powers, expertise and resources to make a significant contribution to preventing and combating major crime. Our effectiveness is enhanced by our partnerships with other law enforcement agencies, especially the QPS.

Our intelligence work helps us decide which crimes pose the most serious threat to Queensland, and our research and prevention function helps us develop preventive strategies. For performance in 2007–08, see pages 14–23.

About major crime

Under the Crime and Misconduct Act, major crime encompasses:

- **organised crime** – criminal activity undertaken with the purpose of gaining profit, power or influence, and involving offences punishable by not less than seven years' jail, two or more people, and planning and organisation or systematic and continuing activity
- **criminal paedophilia** – criminal activity involving sexual offences against children, or child pornography
- **serious crime** – criminal activity involving offences punishable by not less than 14 years' imprisonment (e.g. murder, arson)
- **terrorism** (added by an amendment to our Act in 2004).

Promoting high standards of integrity and reducing misconduct in the public sector

Our misconduct jurisdiction includes all state government departments, the QPS, local governments, most public sector agencies and statutory bodies, universities, prisons, courts, tribunals and elected officials.

We receive and assess complaints about misconduct. While we refer most to the relevant agencies for handling, we monitor how those agencies, including the QPS, deal with them. We investigate the most serious cases of misconduct, or those that involve the public interest. In these ways we safeguard public confidence in the integrity of government agencies while encouraging agencies to take individual responsibility.

Our prevention activities help agencies reduce their risk of misconduct by improving their internal controls, accountability and integrity of operation. For performance in 2007–08, see pages 24–33.

About misconduct

Under the Crime and Misconduct Act, 'misconduct' refers to official misconduct or police misconduct, defined as follows:

- Official misconduct (which applies to all public sector officials, including police) is conduct relating to the performance of a public sector officer's duties or exercise of powers that is dishonest or lacks impartiality, or involves a breach of the trust placed in a person by virtue of their position, or is a misuse of officially obtained information. To amount to official misconduct, the conduct must be a criminal offence or serious enough to justify dismissal. Official misconduct includes conduct by anyone who seeks to corrupt a public officer.
- Police misconduct (which relates only to police officers) is any conduct – other than official misconduct – that is disgraceful, improper or unbecoming a police officer, or demonstrates that person's unfitness to be or continue as an officer, or does not meet the standard of conduct that the community reasonably expects of a police officer.

Providing an effective witness protection service

The Witness Protection area protects people who are in danger as a result of assisting a law enforcement agency such as the QPS. They include victims of crime, innocent bystanders to a crime, and anyone who has information about criminal or corrupt activity. The CMC has responsibility for the protection of witnesses for all Queensland law enforcement agencies. For performance in 2007–08, see pages 34–37.

Engaging in public policy

In recent years the CMC has been engaged with a fourth area of activity, involving projects with a significant criminal justice and public policy focus. For performance in 2007–08, see page 39.

Support activities

The following work areas support the CMC's major areas of activity.

Intelligence

The Intelligence area collects, collates and analyses information and intelligence relevant to our Crime, Misconduct and Witness Protection responsibilities.

It identifies and develops targets for CMC investigative action, provides strategic assessments and trends analysis on relevant matters, maintains an intelligence database, disseminates intelligence to law enforcement and government agencies, acts as a bridge between the Crime and Misconduct areas to facilitate exchange of information, and provides tactical information and intelligence support for investigative teams.

Research and prevention

The Research and Prevention area performs research into crime and the criminal justice system, misconduct and other policy and legislative issues. It may also undertake research into police methods of operation, police powers and their use, and the continuous improvement of the police service. It provides significant services relating to preventing crime and misconduct and building the capacity of agencies to prevent and deal with misconduct.

Operations support

Operations Support, led by the most senior police officer attached to the CMC, coordinates the activities of police working in the CMC, and provides expertise in surveillance, technical services and forensic computing.

Legal support

The Commission and operational areas of the CMC are advised and supported by in-house lawyers who either work in operational areas to manage the day-to-day legal needs of teams or in the CMC's legal practice operated by our Legal Services Unit and Office of General Counsel. The CMC's legal practice provides independent and specialist legal services mostly related to the CMC's functions and powers, administrative or judicial review, and statutory compliance.

Corporate support

A range of corporate services assist all areas of the CMC. They include providing a secretariat service to the Commission; managing corporate governance, human resources and information; and providing financial, administrative, communications and security services.

Collaborative partnerships

In combating major crime, we work closely with state, federal and international law enforcement agencies, participate in state and national law enforcement joint operations and forums, and share intelligence and operational resources. We also engage with other key agencies such as Queensland Corrective Services, and the Australian Transaction Report and Analysis Centre. Our witness protection role is dependent on the cooperation of other law enforcement agencies, especially the QPS.

Equally, close collaboration with public agencies is vital to our Misconduct work. We work with a wide range of agencies including state departments, local government agencies and universities, and agencies such as the Queensland Ombudsman, the Queensland Audit Office, and the Office of the Public Service Commissioner as well as anti-corruption agencies and networks, including those in other states.

Our research area works with universities and other specialist research and funding bodies; public service departments; participants in the criminal justice system; and policy makers. It also seeks active collaboration with the Queensland public, who this year contributed to our research findings through their survey responses and submissions on a range of topics such as public nuisance offences, off-road motorbike noise and policing in Indigenous communities.

Community engagement

We maintain an active outreach and education role within the Queensland community. Our staff present to audiences as diverse as local councillors, transport inspectors, teachers and secondary school students, trainee detectives and international delegations. We have a particular focus on working with Indigenous communities.

Topics that we addressed this year include identifying and managing conflicts of interest, best practice in fraud and corruption control, cyber bullying and internet safety in relation to paedophilia, the role of the CMC in criminal investigations, and accountability in procurement.

We liaise with the media and have an active publishing program, producing materials to suit a wide range of audiences. Some of our products, as required, are made available in community languages. All our publications can be accessed through our website <www.cmc.qld.gov.au>.

How matters come to the CMC

From time to time, the media reports that a particular matter has been referred to the CMC. Such matters vary greatly – from an allegation of misconduct about a public official by a member of the public, to a request from the Attorney-General to research a public policy issue and provide recommendations for amending legislation.

The following section explains how matters come to the main areas of the CMC.

Crime

The Crime Reference Committee (see membership on page 16) may refer major crime to the CMC for investigation on its own initiative, or at the request of the Commissioner of Police or the Assistant Commissioner, Crime. It refers major crime where a police investigation has not been, or is unlikely to be, effective using powers ordinarily available to police officers, and where it is in the public interest to do so.

In addition to referring specific matters, the committee has referred several broad areas of major crime (see box below). This allows us to investigate particular instances of organised crime, paedophilia and terrorist activity without a specific referral from the committee.

Broad areas of major crime referred to the CMC

Many of the CMC's organised crime and paedophile investigations are conducted under the broad major crime referrals which relate to criminal activity involving:

- members of established criminal networks
- money laundering
- outlaw motorcycle gang members or associates
- use of the internet to commit sex offences against children, or offences relating to obscene material depicting children
- extrafamilial paedophile activity by networked offenders or people who offend against multiple victims
- terrorist activity.

Misconduct

Possible misconduct within the Queensland public sector can come to our attention through complaints from members of the public and from within public sector agencies, and through the CMC's own investigative and intelligence activities.

CEOs (including Directors-General) of public sector agencies and other public officials are obliged by law to notify us of suspected misconduct.

Witness protection

Persons who have assisted a law enforcement agency, and who are in danger as a result of having done so, may be eligible for inclusion in our witness protection program. An application for protection is normally submitted to the Witness Protection Unit on behalf of the witness by the relevant law enforcement agency.

We received almost a hundred such applications in the last reporting year.

Public policy

Our public policy projects may arise from investigations, be referred by our minister under section 52(1)(c) of the Crime and Misconduct Act, or be required by other legislation.

In recent years we have undertaken reviews into areas such as policing in Indigenous communities, prostitution and the live adult entertainment industry in Queensland as a result of either legislative requirements or referrals from our minister.

The CMC's powers

Our Act has given us powers to enable us to gather vital evidence and information in the fight against crime and misconduct. These include a range of search, surveillance and seizure powers as well as the power to conduct coercive hearings.

The search, surveillance and seizure powers form an important aspect of CMC investigative activity, while the power to require a person to produce records or other items is used extensively in misconduct investigations, financial investigations into organised crime and money laundering, and confiscation investigations.

In the context of our crime investigations, we can have people arrested and charged. In the context of our official Misconduct functions, we can refer a matter to a prosecuting authority with a view to criminal prosecution, or to the appropriate CEO to consider disciplinary action. We can also charge public officers with official misconduct in a Misconduct tribunal.

Powers under the *Police Powers and Responsibilities Act 2000* can also be used, depending on the operation. Table 2, page 17 and Table 4, page 27 show how we used our powers in crime and misconduct investigations.

Nevertheless, the CMC is not a court. It cannot find people guilty or not guilty, or discipline anyone. Nor can it investigate:

- private sector matters, unless they arise out of dealings with the public sector
- issues arising in other states or territories
- federal parliamentarians, departments or agencies
- state parliamentarians and local councillors, unless their conduct could amount to a criminal offence.

About the CMC's powers

The CMC has power to:

- require a person to produce records or other things relevant to a CMC investigation
- enter a public sector agency, inspect any record or other thing in those premises, and seize or take copies of any record or thing that is relevant to a CMC investigation
- summons a person to attend a hearing to give evidence and produce such records or things as are referred to in the summons
- apply to a magistrate for a warrant to enter and search premises
- apply to a judge for a warrant to use surveillance devices.

The hearings power

The CMC is the only Queensland law enforcement agency with the power to conduct coercive hearings — that is, to require witnesses to attend hearings and answer questions even where the answers tend to incriminate the witness. Such answers cannot, however, be used against them in civil or criminal proceedings, unless those proceedings relate to the falseness of the answers.

The hearings power is a potent investigative tool because it greatly enhances our ability to break through the 'wall of silence' that frequently characterises major crime and misconduct. At the same time, we are conscious of the need to use this power in a discerning way, taking into account the public interest on the one hand and the rights of the individual on the other.

Oversight of our powers

We must apply to the Supreme Court before exercising some of our powers, and the Public Interest Monitor examines our applications for covert search warrants and surveillance warrants. More information about how our investigations and operations are overseen by external mechanisms is found on pages 42–43.

Safeguards to the use of the hearings power in the Crime and Misconduct Act

Our Act contains important safeguards to balance the use of the hearings power. For example, when a witness claims, on the grounds of privilege, that their answers may incriminate them, they can be directed to answer, but any answer they give cannot be used against them in criminal, civil or administrative proceedings.

In addition, the Act states a number of types of privilege upon which a witness can rely to refuse to answer questions, including:

- for a crime hearing, a witness can refuse to answer on the ground of legal professional privilege
- for a misconduct hearing, a witness can refuse to answer on the ground of legal professional privilege, parliamentary privilege and public interest immunity.

The Supreme Court of Queensland decides any unresolved claims of privilege by witnesses in CMC hearings.

In April 2008, the Supreme Court heard the case of *Witness D v CMC*, where doubts were raised about the clarity of the privilege provisions in the Act that a witness can rely upon.

In that case a witness successfully challenged a direction that they were required to answer a question in a misconduct hearing, claiming that they did not have to answer on the ground of privilege against self-incrimination.

Subsequently, our hearings power has been clarified by parliament.

Public inquiries

Complaints or issues brought to our attention sometimes involve wide-ranging allegations that have the potential to reduce public confidence in fundamental systems of public administration and government. Often, in these cases, there are numerous stakeholders who can provide important evidence and information on the conduct of individuals as well as insights into the processes adopted within the particular system.

The holding of public inquiries:

- allows a wider gathering of evidence and information on which to base findings and recommendations than may be possible during a normal investigation
- allows the public to be involved in the process of reform.

Our inquiry into policing in Indigenous communities continued this year, with a public forum held in Cairns (see page 39).