

# Promote a trustworthy public sector

## The big picture for 2009–10

The CMC's role is to continuously improve the integrity of, and reduce the incidence of misconduct in, the Queensland public sector. This year the CMC's Misconduct work took place within the larger context of a public review of integrity and accountability in Queensland. The government's paper, entitled *Response to integrity and accountability in Queensland* and released in November 2009, introduced wide-ranging reforms.

That reform agenda launched a number of significant activities for the CMC. It was the catalyst to our undertaking a review of the police disciplinary system, which was requested by the Attorney-General in response to public concerns. We also worked with the Public Service Commission and other key agencies to promote cooperative best practice across the sector and ensure that public sector agencies and employees receive clear, consistent and practical advice about integrity and accountability issues.

“ *There is no suggestion that Queensland is returning to the days of entrenched serious misconduct* ”

Other major changes arising from the review included the CMC's jurisdiction being extended to include 12 government-owned corporations (GOCs). This development, together with the introduction of new local government legislation, effective from 1 July 2010, required new policies, procedures, processes and arrangements to be put in place by both the CMC and the agencies involved.

This year the number of misconduct complaints we received increased across all parts of the public sector. To respond to this, we continued with our long-term strategy of assisting agencies to build their capacity to deal with misconduct themselves by strengthening their complaints management and misconduct prevention systems. In-house we continued to focus our investigative resources on the most serious and sensitive allegations of misconduct. Our recently granted telecommunications interception powers have already enhanced our investigative effectiveness.

This year has seen significant issues arise from our role as an independent oversight body for the Queensland Police Service. Both our review of the *Palm Island Review* and Operation Tesco — a major investigation into police misconduct on the Gold Coast — exposed some negative aspects of police culture. Although there is no suggestion that Queensland is returning to the days of entrenched serious misconduct, the CMC has expressed concerns to the QPS about issues such as over-identification by some police investigators with subject officers, and unwillingness by supervising officers to address failings on the part of subordinates.

The CMC will continue to give priority to effectively responding to these issues. This may be through undertaking investigations ourselves where it is in the public interest for us to do so, or joint investigations with the QPS when appropriate, as well as through our oversight and capacity-building role. As part of this latter role, we are continuing to devolve responsibility for less serious misconduct matters to QPS supervisors and to hold them accountable.

Elsewhere in the public sector, our project to increase the capacity and accountability of public agencies in handling misconduct has seen four 'early adopter' agencies successfully implement improved integrity systems. We also developed an innovative methodology — our Integrity Index — for assessing the integrity frameworks of public sector agencies.

Legislative amendments taking effect from late 2009 strengthened the role of the CMC in relation to misconduct in public agencies. As well as including a new offence of misconduct in relation to public office, they enable the CMC to lay charges for official misconduct against police and public service officers whose employment in the public sector has ended.

# Reportcard\*

## Performance in 2009–10

### 1. We enhanced public integrity through investigations, prevention and other capacity building as follows (see Table 3):

- We assessed 4649 matters, exceeding our estimate of 3800 by over 20 per cent.
- We assessed 97 per cent of matters within four weeks, exceeding our estimate of 85 per cent.
- We finalised 63 investigations, fewer than our estimate of 80, reflecting the fact that a considerable number of complex investigations are still ongoing.
- We finalised 90 per cent of the investigations within 12 months, exceeding our estimate of 80 per cent.
- We undertook 31 research, intelligence, capacity building, prevention and monitoring projects, exceeding our estimate of 26.

### 2. We have commenced the formal endorsement process – the Integrity Index rating – for four agencies.

### 3. We found that 91 per cent of matters had been dealt with satisfactorily by agencies, exceeding our estimate of 75 per cent by over 20 per cent.

## Performance over five years

Assessing this year's performance over a five-year timeframe reveals the following:

- There has been an upward trend in the number of complaints received over the last four years (Figure 3, page 23). This is expected to continue due to, among other things, an increasing awareness of the CMC's role within the public sector and the community.
- Despite the increase in complaints received, we have significantly improved our timeliness in assessing new complaints over the last five years.
- We have continued to devote significant resources to our misconduct research, intelligence, capacity building, prevention and monitoring projects and activities.

\* Reported against performance indicators identified in the Strategic Plan, supported by SDS performance measures.

Table 3. Performance 2005–06 to 2009–10, and estimated 2010–11, as per SDS measures

| Key performance measures (SDS)   | 2005–06 | 2006–07 | 2007–08 | 2008–09 | 2009–10              |          | 2010–11 (estimate) |
|--|---------|---------|---------|---------|----------------------|----------|--------------------|
|  |         |         |         |         | (target or estimate) | (actual) |                    |
| Matters assessed   | 3924    | 3565    | 3678    | 3922    | 3800                 | 4649     | N/A                |
| Matters investigated   | 110     | 107     | 93      | 80      | 80                   | 63       | N/A                |
| Percentage of matters assessed within four weeks   | 93      | 92      | 85      | 94      | 85                   | 97       | N/A                |
| Percentage of investigated matters finalised within 12 months  | 68      | 76      | 76      | 71      | 80                   | 90       | 80                 |
| Research, intelligence, capacity-building, prevention and monitoring projects undertaken                               | 31      | 33      | 41      | 42      | 26                   | 31       | 26                 |
| Percentage of matters monitored dealt with satisfactorily*   | 89      | 83      | 84      | 87      | 75                   | 91       | 75                 |
| Expenses to achieve strategic goal 'To promote high standards of integrity and reduce misconduct in the public sector' | \$20.2m | \$20.0m | \$20.5m | \$23.5m | \$23.9m              | \$24.4m  | \$26.9m            |

\* Internal management measure, not SDS.

## Complaints to the CMC

In 2009–10 we received 4665 complaints,<sup>1</sup> a 17 per cent increase compared with 2008–09, and the largest number received in any year since the establishment of the CMC (Figure 3).

These complaints contained a total of 11 164 allegations of misconduct. The majority were made against the QPS (60%), followed by local government (9%) and the rest of the public sector (31%) (Figure 4).

Of the 4649 complaints assessed in the year, 3967 complaints (86%) were referred to the appropriate agency to deal with, subject to CMC oversight through its monitoring role. A total of 110 complaints (2%) were retained for investigation by the CMC, and 572 complaints (12%) were assessed as warranting no further action (Figure 5).

In 9 per cent of those referred to agencies we either reviewed, or we are reviewing, how the individual complaint was dealt with by the agency.

Fifty-seven per cent of all complaints were referred by public agencies and around 40 per cent were made by members of the public directly to the CMC (Figure 6).

<sup>1</sup> The number of complaints received may differ slightly from the number assessed (Table 3) because of carryover across financial year reporting.

### Why we refer matters to agencies

As stated, in 2009–10 we referred 86 per cent of complaints to agencies to deal with. Our legislation states that, as long as the public interest is safeguarded, misconduct in a public sector agency should generally be dealt with by the agency itself.

As oversight body for the public sector, receiving and assessing a high volume of complaints gives us an insight into the culture and performance of public sector agencies. It also reassures the public that an oversight body is being made aware of issues as they arise.

Of the complaints we receive, a significant percentage come from public sector agencies. In part, this is because there is a strict obligation to refer — by law, there need only be a suggestion of possible official misconduct for an agency to be obliged to report it to us. On closer examination of the complaints, many of them clearly do not involve official misconduct.

Managing complaints is not only about agency managers dealing with inappropriate conduct. It is also an opportunity for agencies to identify and address any wider systemic issues such as agency-wide policy or procedural deficiencies, an inappropriate workplace culture, or a failure of standards.

Increasingly, public agencies are accepting responsibility for managing organisational culture and the conduct of their staff. That is what referring complaints to the relevant agency to deal with is intended to achieve.

### How misconduct matters come to the CMC

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, or through the CMC's own investigative and intelligence activities.

Chief executive officers (including directors-general) of public sector agencies and other public officials are obliged by law to notify us of suspected misconduct.

“ ... receiving and assessing a high volume of complaints gives us an insight into the culture and performance of public sector agencies ”

Figure 3. Complaints registered between 2001–02 and 2009–10

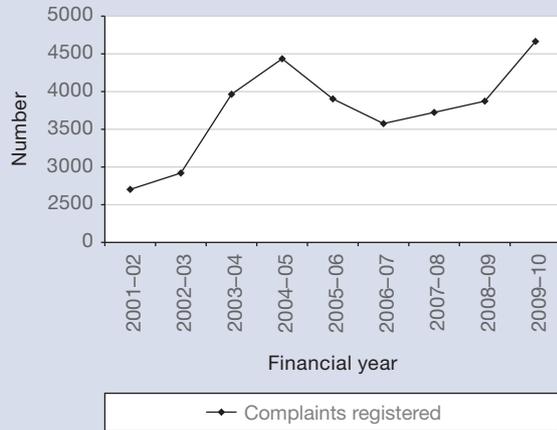


Figure 4. Allegations by agency for 2009–10

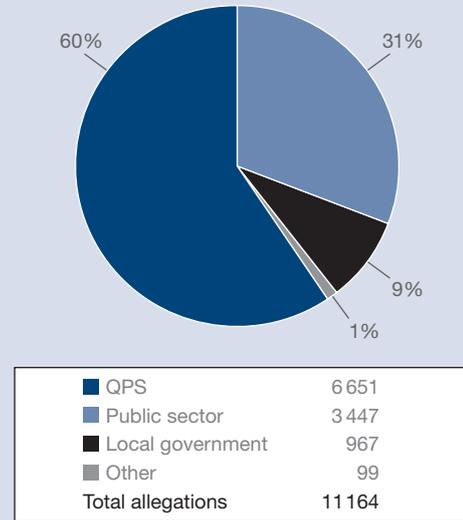


Figure 5. Assessment outcomes

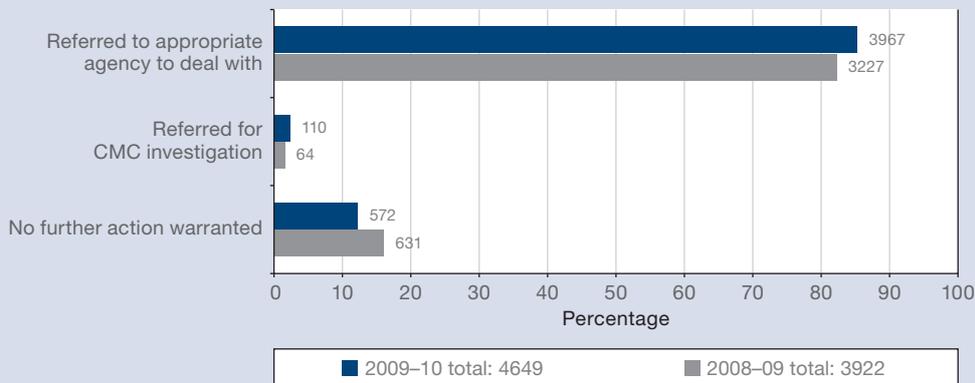
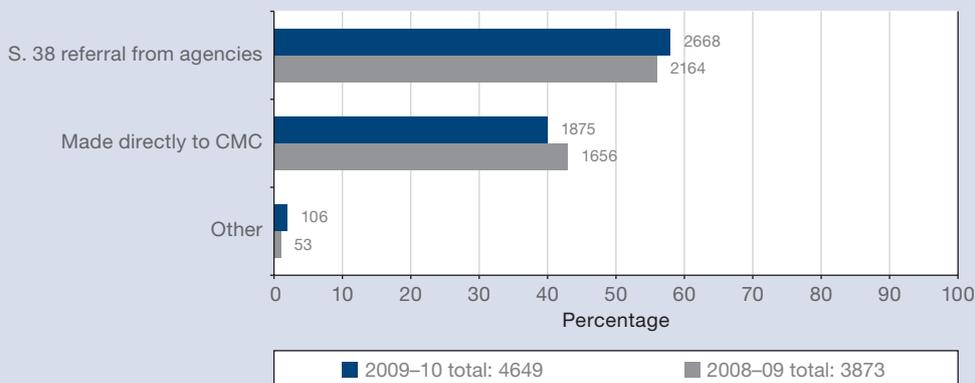


Figure 6. Sources of complaints



## Complaints against public sector officials (excluding the QPS)

Of the complaints made to the CMC, 4513 allegations, or around 40 per cent of all allegations, concerned public sector officers including the public service, local government and politicians (Figure 4, previous page). This represents a 17 per cent increase from the previous year.

This increase does not necessarily indicate an increasing incidence of misconduct within the public sector. Alternative explanations include an increasing awareness within the public sector of the obligation to report to the CMC any suspicion that a complaint, information or matter may involve misconduct, or increasing awareness on the part of the general public about the CMC's complaints handling role.

### Sources of complaints

The vast majority of complaints against employees in public sector agencies came to us directly from the relevant public agency rather than from a member of the public — 63 per cent in the case of local government matters and 76 per cent in all other public sector agencies (excluding the QPS) (see Figure 7).

### Types of allegations

There was no significant change in the types of allegations made this year from those in past years. Not surprisingly, the types of allegations reflect the nature of the core business of the agencies.

In relation to the public sector (excluding local government), allegations concerning inappropriate official conduct (such as inappropriate exercise of power and authority), assault/excessive force, misappropriation/misuse of government resources, corruption and favouritism, and victimisation/harassment accounted for 76 per cent of all allegations received (Figure 8). In relation to local government, corruption and favouritism, official conduct and misappropriation/misuse of government resources accounted for 79 per cent of all allegations received (Figure 9).

Eighty per cent of the allegations received concerned Queensland Health and the departments of Education, Communities and Community Safety, which is indicative of their size and the nature of their core business.

Of the 2131 complaints assessed, we referred 1687 (79%) to the relevant agency to deal with, subject to monitoring by the CMC. Of the 1687 complaints referred, 188 (or 11%) were subject to our monitoring by a case review.

## Complaints against the QPS

This year 6651 allegations against QPS members were received, representing a 23 per cent increase from the number of allegations made in the previous year. Overall, complaints about the QPS accounted for 60 per cent of the total allegations received by the CMC (Figure 4). One of the factors influencing this increase in complaints is likely to be increased media attention during the year on issues concerning police, resulting in greater public focus on the police oversight role of the CMC.

### Sources of complaints

In contrast to the rest of the public sector, complaints data reveal that the majority of complaints against the QPS (54%) come from members of the public directly to us (Figure 7). Given the unique powers bestowed on police officers, and their role in exercising those powers, it is not surprising that members of the general public instigate the majority of complaints about police. Nevertheless, the QPS also referred a large number of complaints (1097 or 43%) to the CMC.

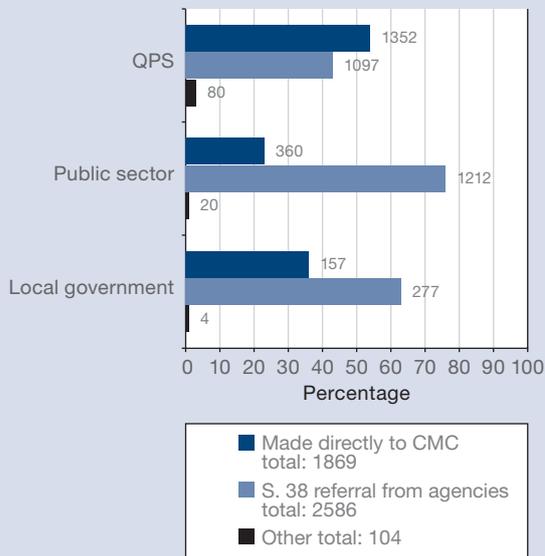
### Types of allegations

The types of allegations made this year are very similar to those made in the previous year (see Figure 10).

Allegations concerning assault/excessive force, official conduct (such as inappropriate exercise of power) and inappropriate behaviour accounted for 46 per cent of all allegations received, with the remainder covering a wide range of other types of conduct.

Of the 2518 matters assessed, we referred 2280 (91%) to the QPS to deal with, subject to monitoring by the CMC. Of the 2280 matters referred, 157 (7%) were subject to our monitoring by a case review.

Figure 7. Sources of complaints (by sector) for 2009–10



Note: These figures do not include a small number of complaints received by the CMC concerning other individuals and agencies under the CMC's jurisdiction. If a complaint contains allegations concerning more than one 'sector', it is only counted once against the sector which is the subject of the most serious allegation.

Figure 9. Types of allegations – local government

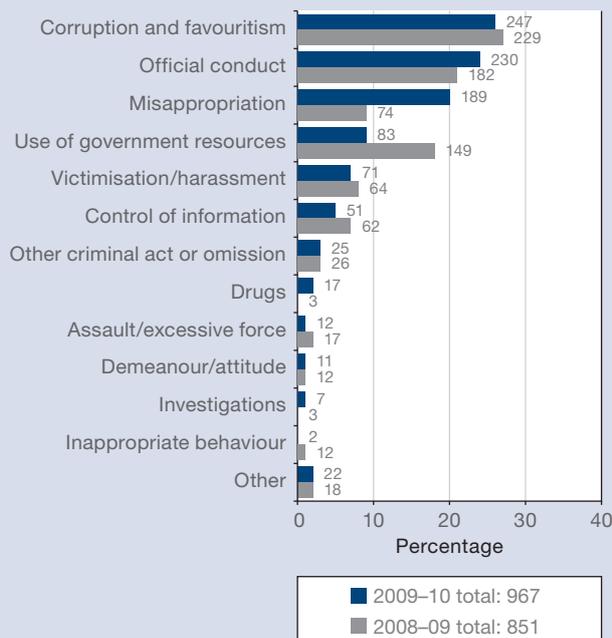


Figure 8. Types of allegations – public sector

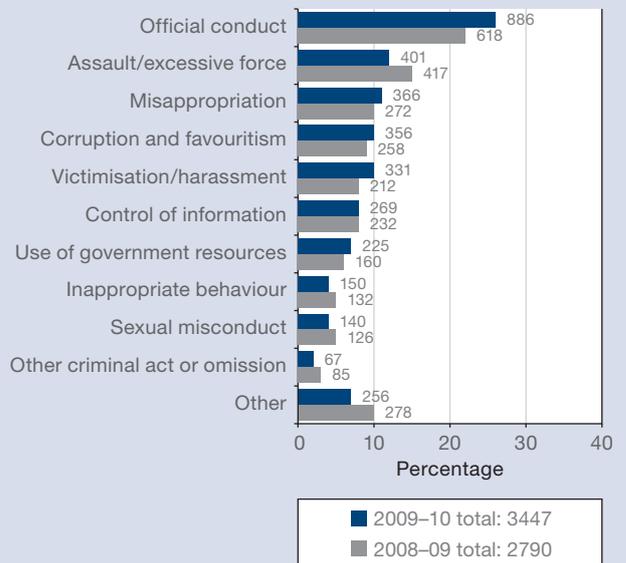
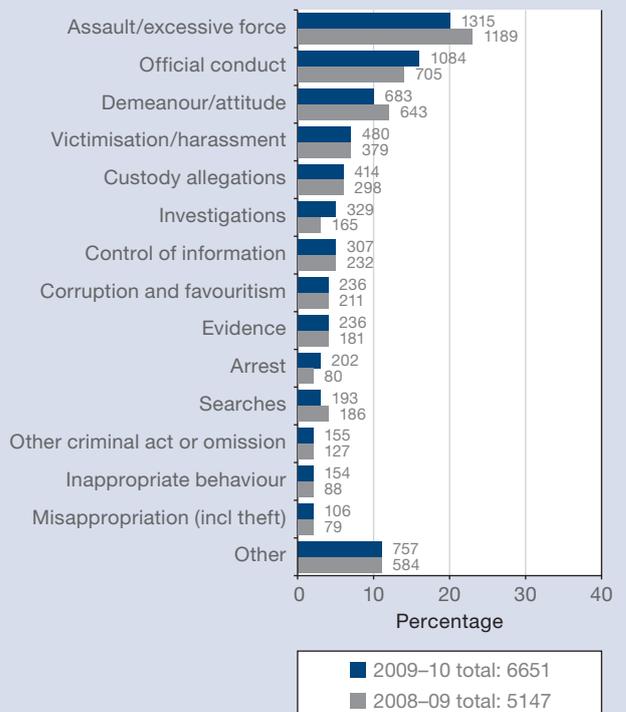


Figure 10. Types of allegations – QPS



## Our oversight role

In our role of oversight body for the public sector, the CMC strives to safeguard public confidence in the integrity of the complaints process.

### Oversight of the public sector

This year 179 public sector matters were the subject of individual close scrutiny through a case review.<sup>2</sup> In 166 (93%) matters, the CMC was satisfied with the way in which the agency dealt with the matter and all compliance and integrity issues. In 13 (7%) matters, there were some concerns about compliance with standards – for example, format and clarity of the investigation reports, or issues such as lack of timeliness, failures to electronically record interviews, failures to interview all relevant witnesses, failures to clearly address all allegations, and failures to provide all relevant information. Where such issues were identified, we raised them with the relevant agency.

As part of a quality assurance review of a local government and an audit of a department, a further 20 matters were examined. All were considered to be dealt with satisfactorily.

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<sup>2</sup> While 188 matters were referred for review in 2009–10, only 179 matters were finalised by the end of the financial year. A similar small discrepancy exists for police matters (see above).

*Increasingly, public agencies are accepting responsibility for managing organisational culture and the conduct of their staff*

### Oversight of the QPS

This year 125 police matters were the subject of individual close scrutiny through a case review. The CMC was satisfied with the way in which the QPS dealt with the matter in 110 (88%) of the cases.

In 8 of the remaining 15 matters we identified a range of concerns – for example, issues about the quality of the investigation or the investigation report, timeliness and, in one instance, the premature finalisation of a matter (because of the retirement of the officer concerned, the early closure led to a failure to consider possible systemic issues). We raised these concerns with the QPS.

The remaining 7 matters concerned allegations of assault and/or the use of excessive force by police against members of the public. Some of these cases involved incidents where the persons dealt with sustained significant injuries, including broken bones and damage to teeth, during the course of their arrest or while in police custody.

In the majority of instances the relevant events were recorded on CCTV footage, through either security cameras in public places or cameras installed in police establishments.

In reviewing these matters, the CMC was concerned about some of the outcomes proposed by the investigating officers, and considered that in some cases formal disciplinary action should ensue. It therefore initiated discussions with senior management of the QPS.

In several cases the QPS did institute disciplinary proceedings, to reinforce the standards of conduct expected of operational police. Early signs, based on our receipt and assessment of complaints, are that the steps taken have reduced the number of concerning matters and improved the way in which they are dealt with.

We also completed an audit of matters concerning the excessive use of force by police, and preliminary analysis indicates that the QPS is generally dealing with these matters satisfactorily. We will continue to monitor the QPS response to these issues.

A further 106 police matters were reviewed as part of audits we conducted during the year.

## Monitoring how agencies handle complaints

We monitor how agencies handle complaints by a wide variety of mechanisms. These include:

- Overseeing an agency's investigation while it is taking place (including, on occasions, assisting in interviewing witnesses or undertaking specific inquiries).
- Reviewing the finalised investigation report before any disciplinary or other managerial action is taken. This gives the CMC an opportunity to form a view about the appropriateness of the agency's investigation and any proposed action, before the matter is finalised.
- After the matter is finalised, reviewing how the agency dealt with the complaint.
- Auditing the way an agency has dealt with a general class of complaints.
- Auditing the quality of an agency's overall integrity framework, including its policies and systems for complaints management.

## CMC review of the QPS *Palm Island Review*

On 17 June 2010 the CMC's review of the QPS *Palm Island Review* was tabled in Parliament.

This report detailed the CMC's comprehensive review of the QPS internal investigation of the initial QPS investigation of the death in custody of Mulrunji on Palm Island in 2004. We found that both the initial QPS investigation and the subsequent internal investigation were seriously flawed and recommended that the QPS consider disciplinary action against the police officers involved.

The review also identified problematic aspects of police culture and reinforced the need for thoroughness and impartiality by police, particularly when investigating their own officers. The report is available at <[www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)>.

Note: A Deputy Commissioner of Police is to be appointed to make a decision regarding disciplinary action.

## Audit of 'reviewable decisions'

We conducted an audit of 'reviewable decisions' — decisions made in relation to internal disciplinary charges of misconduct made against police officers — that were reported to the CMC between January 2008 and June 2009. We identified issues, and made recommendations, in relation to officers hearing disciplinary charges applying the appropriate standard of proof, timeliness in finalising the disciplinary hearings, and the process of notifying the CMC of the outcome. The QPS has already taken up some of our recommendations.

Where we are not satisfied with the outcome of QPS disciplinary proceedings for misconduct, the CMC may apply to the Queensland Civil and Administrative Tribunal (QCAT) to review the disciplinary decision.

Note: The QCAT commenced on 1 December 2009, replacing the former Misconduct Tribunal.

## Referrals to the QCAT

This year, the CMC filed four review applications in the QCAT concerning QPS disciplinary decisions. In this reporting period, the QCAT delivered three decisions in relation to matters referred to it by the CMC.

“ *[The CMC Palm Island report] reinforced the need for thoroughness and impartiality by police, particularly when investigating their own* ”

## Inspector demoted for improper conduct at crime scene

The QPS took disciplinary action for improper conduct against a police inspector who attended the scene of an attempted murder. He was disciplined for failing to take charge of the crime scene and for having a conflict of interest which led to his giving inappropriate advice to the victims. Although the disciplinary hearing found these allegations substantiated, it imposed no sanction.

The CMC appealed the QPS's proposed course of action with regard to the sanction. The then Misconduct Tribunal upheld the appeal and demoted the inspector to the rank of sergeant, finding that he lacked insight into his own behaviour.

The police officer applied for judicial review in the Supreme Court, but his application was dismissed. The judge found that, based on the evidence before him, the tribunal was entitled to draw the inference it did about the officer's lack of insight and that the officer had failed to produce any evidence to the contrary. The officer remains demoted.

## Excessive force allegations to be re-determined by QCAT

The QPS charged a constable with excessive use of force in a series of 14 unconnected incidents in 2004. The allegations involved seven separate victims, some of whom were handcuffed. A disciplinary hearing found the allegations unsubstantiated.

The CMC appealed to the then Misconduct Tribunal. The tribunal, although acknowledging that the QPS adopted the incorrect standard of proof, also found that the allegations were unsubstantiated.

The CMC successfully applied for judicial review in the Supreme Court and the tribunal's decision was set aside. The matter has been referred back to the Queensland Civil and Administrative Tribunal (QCAT) to be redetermined.

The officer also accepted an allegation that he removed the handcuffs of a person in police custody and enticed him into a fight. The QPS imposed no sanction on this conduct. The QCAT will also determine the outcome of this matter.

## Building agency integrity

We are involved in a wide range of strategies and activities designed to build public sector capacity to prevent and deal with misconduct.

### Making agencies accountable

Our legislation includes 'devolution' as a key principle in combating misconduct. This recognises that it is the responsibility of a chief executive to set and maintain proper standards of conduct for their employees and, by so doing, maintain public confidence in the agency. Over the next three years one of the CMC's strategic priorities is to progressively build the capacity and accountability of public sector agencies in managing misconduct, subject to our oversight.

### Public sector 'early adopter' agencies

As part of this strategy, we are aiming by 30 June 2013 to implement improved integrity systems across all core public sector agencies – departments and the QPS – and other significant agencies such as local governments. This year we successfully worked with four 'early adopter' agencies (Queensland Health, Brisbane City Council, the Department of Employment, Economic Development and Innovation, and the Department of Justice and Attorney-General) to implement improved systems.

### Integrity Index

We have also developed an Integrity Index, a tool which enables us to rate the integrity frameworks of public sector agencies. It examines three main elements:

- complaints management
- misconduct prevention
- institutional integrity.

The index will be progressively applied in all public sector departments by 2013.

## Police service: Project Verity

As in the wider public sector, a project is being trialled within the QPS to promote more timely and appropriate internal resolution of complaints. Project Verity is our main capacity-building initiative with the QPS, and is designed to give local-level managers, when appropriate, the responsibility of dealing with less serious complaints about their officers through investigation or other appropriate management action.

Project Verity has been an ongoing commitment of the CMC and the QPS since 2007. Over that time, we have identified a number of implementation difficulties, both procedural and cultural, within the QPS. The police service, in consultation with the CMC, has sought to address these, and began a further trial in April 2010. To evaluate it we are conducting, via access to the relevant police database, real-time monitoring of complaints received; audits have also commenced and we are considering re-surveying QPS members to identify impediments to implementation.

In line with our goal of promoting a trustworthy public sector, Project Verity is an opportunity for the QPS to demonstrate to the public, and the CMC, that it can take timely, effective and decisive action when officers fail to meet the required standards of conduct.

## Publishing relevant resources

*Separation risks: undue influence, conflicts of interest and information security when employees move on* (July 2009) is a 16-page publication exploring the issues of employee separations and the range of risk-management strategies available. It is available on our website at <[www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)>.

The second Australian Public Sector Anti-Corruption Conference (APSACC) was held in Brisbane in July 2009. The CMC, the Independent Commission Against Corruption (NSW) and the Corruption and Crime Commission (WA) jointly hosted the conference which attracted more than 500 state, national and international delegates. Topics included dealing with the challenges of matters arising in remote locations; whistleblower issues; information protection; and ethical leadership.

The third APSACC will be held in Fremantle, WA in November 2011. The 2009 conference papers and details of the 2011 conference are available at <[www.apsacc.com.au](http://www.apsacc.com.au)>.

## Working with other integrity agencies to implement the reform agenda

In 2009 the Queensland Government conducted a public review of the integrity and accountability framework in Queensland, publishing a discussion paper to facilitate wide-ranging consultation. A number of reforms were identified, including:

- adopting a single code of conduct to be applied across the Queensland public sector
- enhancing the public interest disclosure/whistleblower protection legislation
- establishing an Ethical Standards Branch within the Public Service Commission
- introducing mandatory annual training in ethical decision making
- enhancing the Public Sector Ethics Network
- implementing consistent thresholds and requirements in relation to declaration of gifts.

Since the review, the CMC has worked with the Public Service Commission on implementing the reform agenda and is represented on the Queensland Public Sector Ethics Network (QPSSEN), a consultative forum involved in promoting the integrity reforms.

We are also participating on the interagency steering committee overseeing the implementation of the 54 recommendations arising from the comprehensive Service Delivery and Performance Commission Review of the QPS, carried out in 2008. One key focus for the CMC is providing support to a QPS project to replace its current complaints management and discipline database with a new system.

## Responding to an increased jurisdiction

As a result of gaining jurisdiction from 1 January 2010 over 12 government-owned corporations (GOCs) and with the 1 July 2010 implementation of a new Local Government Act, the CMC focused attention on working cooperatively with the relevant public sector agencies to facilitate the transition to the new arrangements.

We held an information sharing and training day for GOC representatives, met with the Department of Infrastructure and Planning (DIP) about complaint management and misconduct prevention, and are currently aligning our respective IT systems for better management and monitoring of complaints.

Our meeting schedule also involved regular visits to regional Queensland and the provision of workshops on relevant topics such as reporting complaints to the CMC and dealing with complaints about misconduct.

## Researching police methods and practice

The CMC is involved in a wide range of activities relating to police practices, including conducting research into police methods of operation, police powers and their use, and law enforcement by police. Our work over the year includes the following.

- After the death of a man in North Queensland following the multiple deployment of a Taser device, in June 2009 the Police Minister announced a joint QPS–CMC review of Taser policy and training. The review was to ensure that QPS Taser policy, training and monitoring and review processes reflect best practice. Although it found that most of the risks associated with the use of Tasers were currently addressed by existing mechanisms, 27 recommendations for further improvement were made. In April 2010, arising from the joint QPS–CMC Taser review, we were asked by the Attorney-General and Minister for Industrial Relations to evaluate the implementation and effects of the QPS's revised Taser policy, training, and monitoring and auditing processes. We will table a final report in Parliament in the next reporting period.
- We conducted the 2010 instalment of our annual ethics survey of police recruits and first-year constables, which gauges their attitudes to, and perceptions of, a range of issues related to police ethics and misconduct. We are currently finalising a public report based on our survey results between 1995 and 2008, which will identify any attitudinal changes over time.
- In late 2009, at the request of the Attorney-General and resulting from the submissions received during the government's review of integrity and accountability in Queensland, the CMC commenced a detailed review of the Queensland Police Service's processes for disciplining its members. The QPS assisted us in this review by providing a dedicated project team to provide advice, coordinate requests for data and information, and lead focus groups with police officers around the state. Our report will be published in the next reporting period.

- The CMC is currently reviewing the legislation relating to 'move-on' powers, including its application and effectiveness (see also page 40).

'Move-on' powers enable police to direct someone to leave a public place — as a way of dealing with behaviour that is disorderly, indecent, offensive or threatening or interferes with trade or business. Their introduction in 1997 was controversial, due to the potential for abuse and disadvantage to sections of the community. In July 2006, the powers were broadened, making them available to police statewide in public places.

The report will be released in the next reporting period.

### Legislative amendments relevant to our Misconduct function

Concerns have been raised for many years about public servants and police officers being able to escape liability for official misconduct or disciplinary charges by resigning their employment. However, the *Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009* will enable the CMC to lay charges for official misconduct against former police officers and other public officials.

The amendments also enable disciplinary action to be taken against former officers, within two years of cessation of employment.

This legislation also amended the *Criminal Code* to include a new offence of 'Misconduct in relation to public office', under section 92A. This offence provision prohibits any current or former public official from abusing their office to dishonestly obtain a benefit for themselves or another person.

The CMC recommended the introduction of the new offence in its report, *Public duty, private interests: issues in pre-separation conduct and post-separation employment for the Queensland public sector*, in December 2008.

The legislation is available on [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au).

## Misconduct investigations

We concentrate our efforts on matters such as fraud within government agencies, police corruption and matters of significant public interest.

A successful conclusion to a CMC investigation may be the bringing of criminal charges or, just as importantly, the restoring of public confidence in a public sector activity or agency, a politician or the police. Our misconduct investigations also focus on identifying any systemic or procedural weaknesses in an agency and developing recommendations to address them.

Figure 11 shows the number of finalised investigations by sector. Table 4 shows the use of CMC powers in investigating misconduct in 2009–10 and the preceding four years.

Figure 12 and Figure 13 (next page) show, respectively, the types of charges recommended (total of all agencies) and recommended charges by agency. The small number of total charges compared with last year reflects the fact that a large number of complex investigations are still ongoing and will conclude in the 2010–11 year.

### Investigations into the public sector

Of the 63 investigations the CMC conducted this year, 30 investigations involved 100 allegations of misconduct by public officials in public sector agencies other than the QPS. The types of allegations investigated are represented in Table 5 (next page). The two most common were corruption and favouritism and official conduct.

Figure 11. Finalised investigations by agency

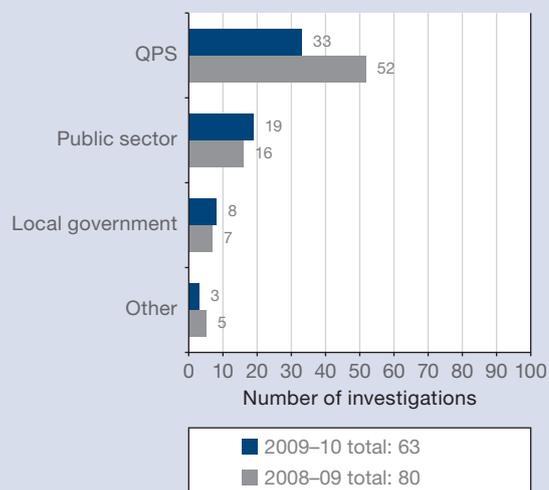


Figure 12. Types of charges recommended

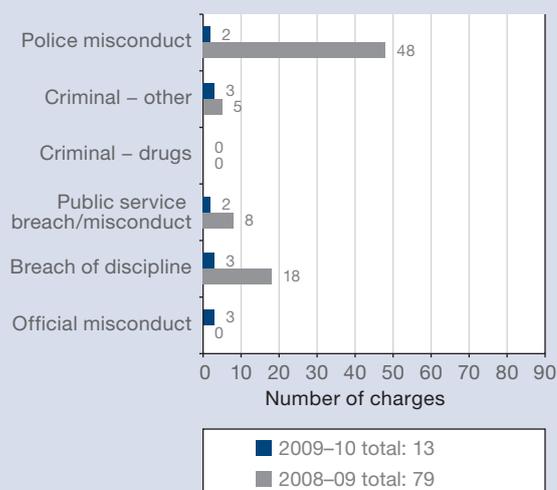
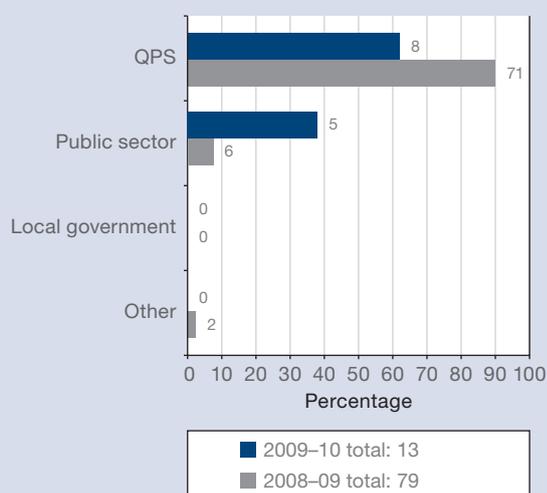


Table 4. Use of CMC powers for investigating misconduct, 2005–06 to 2009–10

| Description                       | 2005–06 | 2006–07 | 2007–08 | 2008–09 | 2009–10 |
|-----------------------------------|---------|---------|---------|---------|---------|
| Use of powers:                    |         |         |         |         |         |
| Power to enter                    | 15      | 3       | 0       | 0       | 7       |
| Notices to discover information   | 223     | 198     | 139     | 80      | 141     |
| Notices to attend hearing         | 71      | 121     | 54      | 44      | 141     |
| Search warrant applications       | 22      | 24      | 4       | 8       | 14      |
| Surveillance warrant applications | 0       | 0       | 0       | 0       | 3       |

Figure 13. Recommended charges by agency



“ A successful conclusion to a CMC investigation may be the bringing of criminal charges, or just as importantly, the restoring of public confidence ”

## Investigations into police

The CMC conducted 33 investigations into 111 allegations involving official misconduct by members of the QPS. The types of allegations investigated are represented in Table 6. The two most common were assault and corruption and favouritism.

## Individual misconduct investigations

A number of high-profile, complex misconduct investigations were undertaken in 2009-10. They included the following.

### Allegations relating to a former ministerial adviser

The CMC investigated allegations that the Queensland Rugby Union (QRU) in 2009 improperly paid \$200 000 to the University of Queensland Rugby Club from a \$4.2 million Queensland Government grant intended for the redevelopment of the QRU's facilities at Ballymore.

Documentation provided to the CMC indicated that the \$200 000 from the original grant had been paid to the UQ Rugby Club on the advice of an adviser, Simon Tutt, to the Minister who had carriage of the grants program. At that time the adviser was also a member of UQ Rugby Club.

The CMC's investigations, which included conducting public hearings, identified a number of issues about the general role of ministerial advisers and their interactions with public servants – issues also of relevance to the government's integrity reform agenda. In late 2009 the CMC called for public submissions on the broader role of ministerial advisers and their interaction with the public service.

A public report on this investigation will be published in the next reporting period.

Table 5. Types of allegations investigated by sector

|                                    | Public sector | Local government | Other     |
|------------------------------------|---------------|------------------|-----------|
| Corruption and favouritism         | 20            | 15               | 11        |
| Official conduct                   | 6             | 9                | -         |
| Evidence                           | -             | 7                | -         |
| Misappropriation (including theft) | 6             | 5                | 1         |
| Other criminal act or omission     | 5             | 5                | 2         |
| Control of Information             | 3             | 3                | -         |
| Protection of offenders            | 1             | -                | -         |
| Use of government resources        | 1             | -                | -         |
| <b>Total = 100</b>                 | <b>42</b>     | <b>44</b>        | <b>14</b> |

**Table 6. Type of allegations investigated**

|   | Police Service |
|---|----------------|
| Assault/excessive force without a weapon                | 18             |
| Corruption and favouritism                              | 18             |
| Official conduct  | 16             |
| Control of information                                  | 10             |
| Custody allegations                                     | 7              |
| Evidence  | 6              |
| Police/CMC investigation of complaints against police   | 6              |
| Victimisation/harassment – workplace                    | 5              |
| Investigations  | 4              |
| Misappropriation (including theft)                      | 4              |
| Other criminal act or omission                          | 4              |
| Demeanour/attitude                                      | 3              |
| Inappropriate behaviour                                 | 3              |
| Property and exhibits                                   | 3              |
| Protection of offenders from investigation/prostitution | 1              |
| Searches  | 1              |
| Traffic offences  | 1              |
| Victimisation/harassment – other than workplace         | 1              |
| <b>Total</b>  | <b>111</b>     |

### **Allegations against the Honourable TM Mackenroth and the Honourable JP Elder**

Following the publication of the *South East Queensland Regional Plan 2009–2031* (the 2009 SEQ plan) in July 2009, the CMC was asked by the Premier to investigate possible improper influence on the part of two former senior politicians.

Newspaper articles published by the *Courier-Mail* on 30 July and 4 August respectively implied that the Honourable TM Mackenroth, a retired former Deputy Premier of Queensland, and the Honourable JP Elder, a professional lobbyist and former Deputy Premier of Queensland, had each improperly influenced the review process of certain parcels of land included in the urban footprint contained in the 2009 SEQ plan.

Following publication of the second article, the Premier asked the CMC to also consider the circumstances of every instance in which an extension had been made to the urban footprint of the 2009 SEQ plan, to determine if any individual person had influenced the review process.

The CMC's investigations determined that there was no evidence of official misconduct on the part of any person. The reports detailing these investigations are available on our website at <[www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)>.

### **Prosecutions of Gordon Nuttall, Harold Shand and the late Ken Talbot**

We reported last year on the investigation into former Queensland Government Minister Gordon Nuttall, who was found guilty in July 2009 of receiving secret commissions totalling almost \$360 000 over three years from two prominent Queensland businessmen, Ken Talbot and Harold Shand. On 17 July 2009 Mr Nuttall was sentenced to seven years jail for each offence, to be served concurrently. He will be eligible for parole on 2 January 2012. Mr Nuttall's appeal to the Court of Appeal in relation to conviction and sentence was dismissed on 23 March 2010.

In August 2009 further criminal charges, for official corruption and perjury, were commenced against Mr Nuttall as a result of his alleged receipt of payments from another businessman and alleged false evidence given during a CMC hearing. The trial is expected to commence in September 2010.

Mr Shand faced trial between 8 March 2010 and 19 March 2010; however, the jury was discharged after it was not able to reach a verdict, and his re-trial is set to commence on 15 March 2011. Mr Talbot's trial, which was to commence on 30 August 2010, was de-listed after he died in a plane crash in the Congo in June 2010.

### **Investigation of a police officer in relation to alleged unlawful drug-related activities**

In early 2009 the CMC commenced an investigation, Operation Copeland, into information received that a police officer in a regional centre was involved in the unlawful importation, trafficking and possession of marketable quantities of so-called 'party' drugs. The investigation was jointly undertaken with the Australian Federal Police and was assisted by the Australian Customs Service.

In November 2009 substances later confirmed as dangerous drugs were located as a result of executing search warrants.

As a result of the CMC investigation into his activities, the subject officer resigned from the QPS on 19 November 2009.

### Joint investigation into multiple allegations about Gold Coast police — Operation Tesco

In this reporting period the CMC also undertook Operation Tesco, an investigation into allegations involving multiple aspects of police misconduct within the Gold Coast District, including alleged drug use, improper associations with criminals, improper use of and access to confidential QPS information, and the misuse of QPS resources.

More than 60 different matters are currently being investigated under the auspices of Operation Tesco, and the assistance of senior QPS investigators has resulted in many of these matters being concluded much earlier than would otherwise have been possible. The CMC expects to conduct public hearings in relation to some aspects of Operation Tesco in the latter half of 2010, with a view to publishing a report during the 2010–11 reporting period.

### QPS response to the *Dangerous liaisons* report

In response to the CMC's *Dangerous liaisons* report, the Commissioner of Police gave a commitment to government to address the issues raised by the CMC. This has included:

- a thorough overhaul in 2009 and 2010 of QPS policy, processes and procedures across areas related to managing human sources and paying rewards to informants
- a comprehensive approach to communicating the issues arising from the report, including distributing 2000 copies of the report throughout Queensland and implementing awareness sessions and formal training
- incorporation of lessons learned in the QPS corruption prevention plan and relevant training.

### *Dangerous liaisons* (Operation Capri) — update on disciplinary action

Last year we reported on Operation Capri, an investigation conducted by the CMC over two and a half years, between March 2006 and September 2008, which concerned multiple aspects of police misconduct in connection with using and managing prison informants.

We reported last year that disciplinary action in relation to four officers had not been concluded and three of the 25 officers implicated were still facing criminal charges. Of these three officers, two are now scheduled to face court in October 2010. The third, who is no longer a police officer, was tried in the District Court in Brisbane in May 2010 and acquitted of a charge of making a false declaration.

Of the four officers awaiting disciplinary action, one officer retired from the QPS on medical grounds prior to disciplinary action being concluded; and one officer was demoted two ranks before retiring on medical grounds. Two officers are still to be dealt with pending conclusion of criminal proceedings.

Our report, *Dangerous liaisons*, was released early in 2009–10.

### Building agency capacity in investigating misconduct

The CMC supports agencies in investigating potential misconduct within their ranks. Working cooperatively with agencies in this way helps both to progress individual matters and to build an agency's capacity to deal effectively with future misconduct. It is also an effective use of the CMC's limited resources.

At times we also assist agencies to investigate matters through the selective use of our coercive powers. For example, our financial investigators may obtain information and documents from third parties to assist an investigation, using our notice to discover powers.

## **Assistance to the State Coroner: deaths in custody**

The CMC also provides varying levels of assistance to the State Coroner in conducting investigations into deaths in the context of contact with police (such as deaths occurring during attempted arrests).

One such matter concerned the death of a man at Brandon, North Queensland, involving the multiple discharge of a Taser by police. At the request of the Coroner the CMC has overviewed that investigation and an inquest into this death is expected to take place in the next reporting year.

## **Coronial recommendation re CMC involvement in investigating deaths in police custody**

The findings of the Acting Coroner (Deputy Chief Magistrate Brian Hine) delivered in May 2010 in the re-opened inquest into the death in custody of Mulrunji on Palm Island included the following recommendation:

I recommend that the future investigation of deaths in police custody, which exhibit indicia of unnatural causes or which have occurred in the context of police actions or operations be undertaken solely or primarily by the CMC, as the specialist misconduct and anti-corruption body for the State of Queensland. To enable this to occur, I recommend that the CMC be resourced and empowered [by legislative fiat] to undertake the role.

On 1 June 2010 the State Coroner met with the CMC Chairperson, QPS Commissioner and Acting Director-General, Department of Justice and Attorney-General. They reached a conditional agreement about interim arrangements to ensure that all parties understand the roles to be performed by each agency and the new notification procedures. It is intended that a more detailed and revised memorandum of understanding identifying specific procedures will be developed this coming year.

The new arrangements and the independence of the State Coroner and the CMC will contribute to maintaining public confidence in the impartiality of these investigations as well as providing greater transparency.

## **Looking forward**

In 2010–11 we will pursue our objective to promote a trustworthy sector using the strategies outlined in our *Strategic Plan 2010–14*. We will give particular emphasis to:

- Ensuring electronic systems support complaints management and integrity systems
- Investigating and assessing the emerging risks in local government
- Investigating and exploring responses to serious police misconduct.