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This document is based on the full report of the Inquiry into the Handling of Sexual Offences by the Criminal Justice System, *Seeking Justice* (2003).

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ABBREVIATIONS

DPP	Director of Public Prosecutions
LAQ	Legal Aid Queensland
ODPP	Office of the Director of Public Prosecutions
OPM	Operational Procedures Manual (QPS)
QPS	Queensland Police Service

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Seeking Justice

An Inquiry into how sexual offences are handled by the Queensland criminal justice system

During the last decade, cultural and societal change has started to remove the veil of secrecy surrounding sexual abuse, encouraging more victims to come forward to report their experiences than in the past. On average, 6500 sexual offences are reported to the police every year, and this figure is steadily increasing as more 'historic' offences are being reported. The question for us today is: How well is our criminal justice system responding?

Catalyst for the Inquiry

In March 2002, internationally renowned swimming coach Scott Volkens was arrested on charges of indecent dealing with children under the age of 16 years between the years 1984 and 1986.

In September 2002, before the matter could be brought to trial, the charges against Mr Volkens were dropped by the Director of Public Prosecutions. The decision prompted considerable public disquiet about the way in which sexual abuse was being handled by the criminal justice system. At the same time as investigating the specific details of the Volkens case, the CMC held a public inquiry into this broader issue. This paper is a summary of the findings of that Inquiry.

Why an Inquiry?

The criminal justice system is a linchpin of our society: continued public confidence in it demands robust processes.

While the system must respond to wrongdoing and criminal actions in all their forms, the nature of sexual offences and their impact on victims and the community make the handling of allegations of sexual offences particularly sensitive. The process must be seen both to encourage victims of abuse to come forward to report such offences, and to do all that it can to prevent the occurrence of such abuse.

Purpose of the Inquiry

The Inquiry was established to assess the adequacy of the Queensland criminal justice system's response to allegations of sexual abuse — particularly in relation to the training, expertise and supervision of police investigators, existing procedures for the prosecution of sexual offenders, and the appropriateness of identifying a person charged with a sexual offence. Its precise terms of reference were:

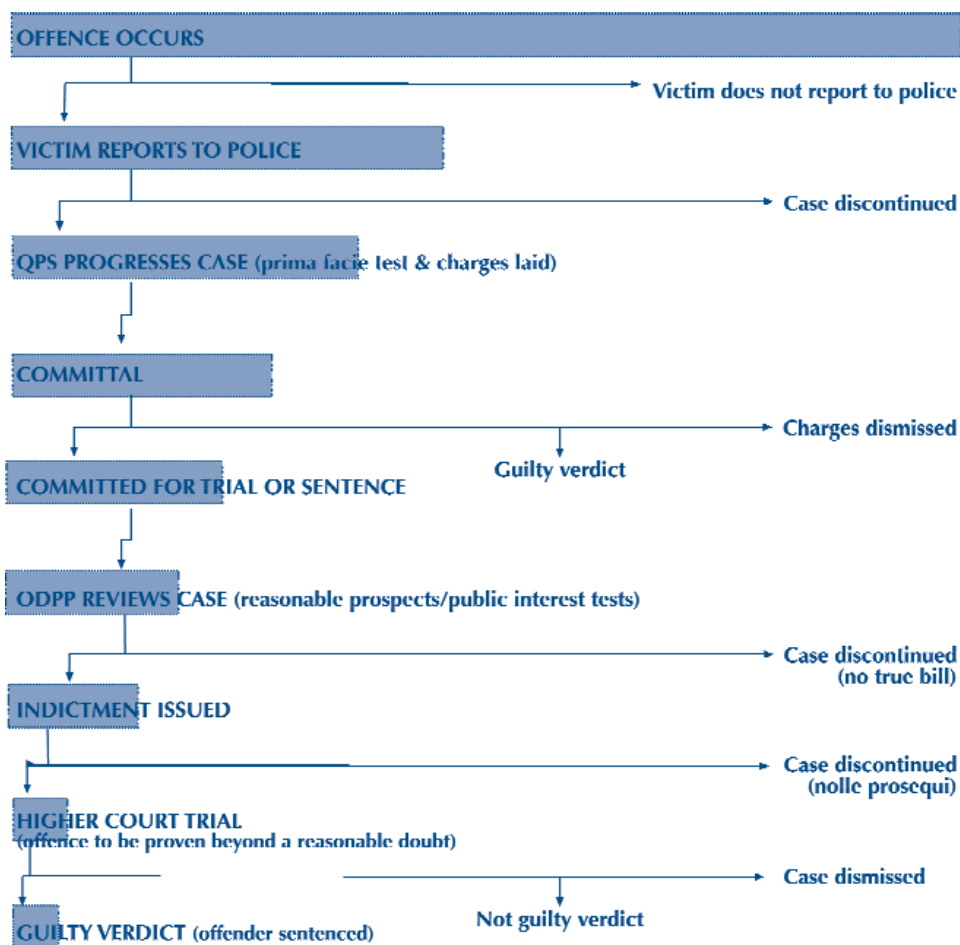
1. the training, expertise and supervision of police officers investigating sexual offences
2. the adequacy of existing guidelines and procedures for the initiation and discontinuance of the prosecution of sexual offenders by police and the Office of the Director of Public Prosecutions (ODPP)
3. the appropriateness of, and the circumstances in which, the publication of identifying information about a person charged with a sexual offence should be suppressed.

While many favourable comments about the handling of sexual abuse matters were made to the Inquiry, considerable dissatisfaction with current processes was exposed. Much of the concern related to the high attrition rates of

The report looks at all sexual abuse in our society, affecting both adults and children.

Figure 1: The progression of sexual offence matters through the criminal justice system

The shaded boxes denote the passage of offences through the system (e.g. only about a quarter of actual offences are reported to police and only a small proportion of these result in a guilty verdict).



matters from the various stages of the criminal justice system — only about 17 per cent of reported sexual offences result in a conviction, a figure consistent with data from other States and overseas. Concerns about attrition largely related to how the police respond to and investigate reported offences and the handling of matters by the ODPP.

Inquiry methods

In October 2002, the CMC called for submissions to the Inquiry. Written submissions were received from 8 government departments and agencies, 10 legal organisations, 10 community organisations, 2 media groups, 3 academic groups and 39 individuals.

Most of the individual submissions received were from people with first-hand experience of the criminal justice process, as either victim or alleged perpetrator of sexual abuse.

Oral submissions were received from 75 telephone callers, and the CMC consulted 20 academic, community, government and legal agencies (including the judiciary) and individuals. At the same time, CMC researchers reviewed local and international literature relevant to the terms of reference and analysed police and court data to assess recent trends in Queensland. Public hearings were held at the CMC on 20 and 21 November 2002, at which the views of a wide range of organisations and individuals were presented.

How sexual abuse matters are handled

When an allegation of sexual abuse is made, the police are the first to respond. Officers document the allegations, initiate an investigation and, depending on what they find, submit a brief of evidence to a committal hearing. In some courts in Queensland, the ODPP can also prosecute the matter at

committal. If a prima facie case is established at committal, the ODPP takes over the prosecution of the accused.

However, there are a number of stages in the process where cases can be withdrawn, dismissed or discontinued.

Victims themselves may choose not to continue with their case for a host of reasons including the very nature of the process itself. On the other hand, decisions to discontinue the case on legal grounds are often made by the magistrate, the ODPP or the higher courts, again for a wide range of reasons including a lack of witnesses or corroborative evidence.

How matters progress

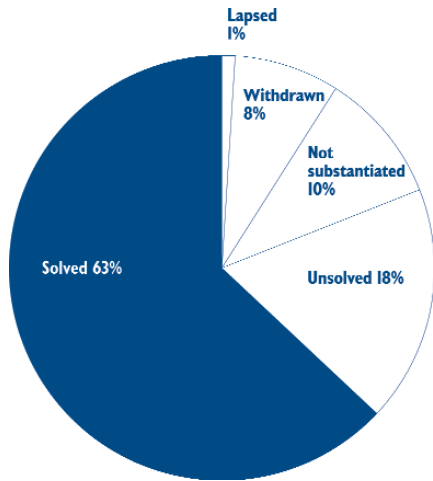
Tests of evidence

In Queensland there are four tests that a matter must satisfy before it can proceed to trial:

1. **Laying charges.** Applied by police when there is sufficient credible evidence identifying a person as having committed an offence.
2. **The prima facie test.** Applied by police and magistrates (and sometimes by the ODPP) to determine whether there is evidence available capable of establishing each element of the offence.
3. **The reasonable prospects test.** Applied by the ODPP before a matter can be heard and determined at trial, or by police prosecutors for less serious matters. The test asks, 'Can it be said that there is a reasonable prospect of conviction by a reasonable jury (or magistrate) properly instructed?'
4. **The public interest test.** Applied by the ODPP after the reasonable prospects test but before a matter can be heard and determined at trial. It involves ensuring that there is not some discretionary factor, such as public interest, that requires the matter not to proceed. (Public interest is not synonymous with public curiosity or public expression.)

Not all offences progress to trial (see Figure 1). About two-thirds of offences reported to the police progress to a committal hearing, others are

Figure 2: Outcome of 27 439 sexual offences reported to the QPS 1999–2002



Source: Data provided to the Inquiry by the QPS in February 2003.

Note: Data include preliminary data for June–December 2002 only. These data may be subject to change.

withdrawn, unsubstantiated or unsolved (see Figure 2).

Committal

A review of 28 777 sexual offence matters processed by the courts between 1994 and 2001 (see Figure 3) found that at the committal stage:

- ▶ 64 per cent of cases were committed to a higher court for trial or sentencing
- ▶ 27 per cent of cases were withdrawn or dismissed

- ▶ 1 per cent of the accused were found guilty and sentenced to prison or given a suspended prison sentence
- ▶ 8 per cent of the accused were found guilty and received another form of punishment such as an intensive correctional order, probation, bail or fine.

Discontinuation of cases

About 35 per cent of the sexual offence matters committed to the higher courts by magistrates were discontinued by the prosecution as either a no true bill (before indictment) or a nolle prosequi (either after indictment or during the trial).

Higher courts

Excluding those matters that resulted in a no true bill or a nolle prosequi, matters heard before the higher courts (District, Supreme and Circuit Courts) resulted in:

- ▶ 8 per cent of the accused being found not guilty
- ▶ 9 per cent of the accused being discharged
- ▶ 83 per cent of the accused being found guilty (either by trial or plea) and sentenced to prison, given a suspended prison sentence or another form of punishment such as probation, community service or a fine.

Issues raised at the Inquiry and the Commission's response

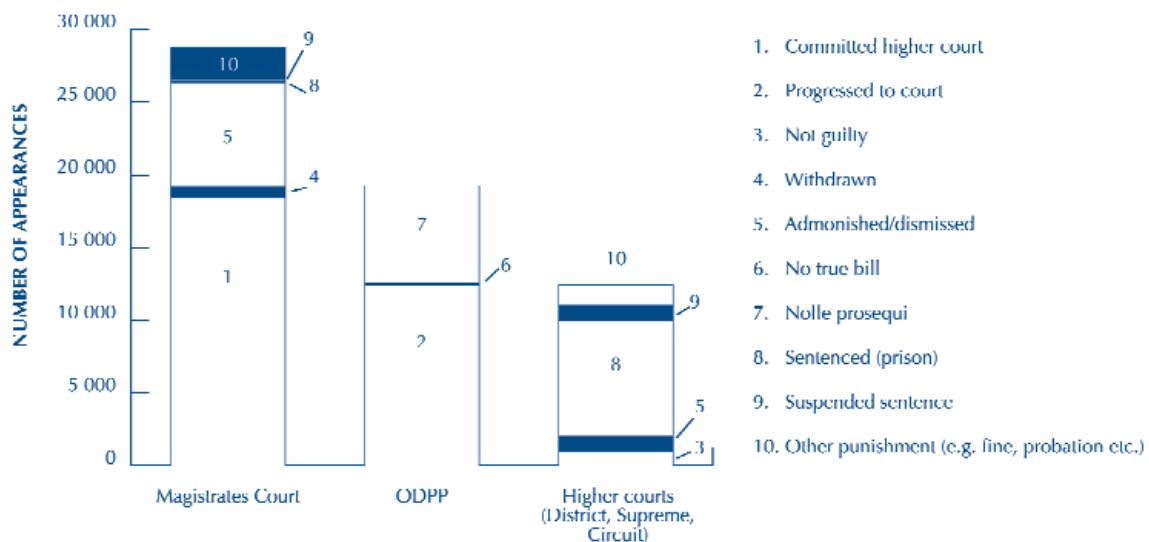
The major issues that arose at the Inquiry are listed below with the full list of recommendations appearing at the end of this paper. Although each issue did not necessarily result in a specific recommendation, each one contributed significantly to the decisions that were made about how and where the most effective improvements could be made to the criminal justice system's response to sexual offence allegations. Even though some of the issues fell outside the Inquiry's terms of reference, each contributed to the larger picture and is presented for further consideration by the government.

The first six issues below cross all three terms of reference. The remainder address each term of reference in turn.

Are the implications of disclosures of sexual abuse fully understood?

The Commission makes a number of recommendations to enhance the understanding of sexual abuse more generally, including training for specialist police and ODPP staff, formal communication strategies by the ODPP and the QPS about sexual offence matters and a review of the role of ODPP Victim Liaison Officers. See Recommendations 1–3, 11, 14, 15 and 17.

Figure 3: The progression of sexual offences through the criminal justice system: all sexual offences, all courts 1994–2001



Source: Department of Justice and Attorney-General and Office of Economic and Statistical Research

Should there be a statute of limitations for the prosecution of historic sexual offences?

The Commission does not favour a statute of limitations for sexual offence matters. However, the recommendations for reform by the QPS and the ODPP should enhance the prosecution of historic cases and help expedite decisions to pursue or discontinue prosecutions.

Is the committal process in need of review?

While submissions to the Inquiry provided a great deal of support for making the committal process more effective than it currently is, there were conflicting views about:

- ▶ the nature of the test applied (prima facie test or reasonable prospects)
- ▶ the importance of costs
- ▶ the value of the Committals Project — that is, the pros and cons of police versus ODPP representation at the committal hearing
- ▶ whether the committals process should be retained at all.

It is the view of the Commission that these arguments cannot be resolved without fully evaluating the current situation in Queensland and broadly examining the processes currently operating in other States and overseas. This may be a matter for the government to take forward.

Can sexual offence matters be expedited through the criminal justice system?

Implementation of the recommendations arising from the Inquiry should improve the timeliness of the decision-making processes by police and the ODPP for sexual offence matters generally. The Commission also acknowledges that court processes can affect the time required for sexual offence matters to progress through the system, but the examination of such processes was not within the terms of reference of the Inquiry. A review of the committals process may be fruitful in this regard.

Are there ways that the police and the ODPP can offer more support to the victims of abuse?

The Commission's recommendations for specialist training for police and ODPP staff, for a review of the regional response by the QPS to sexual offences, for enhanced communication with complainants, for a review of the role of ODPP Victim Liaison Officers, and for implementation of a formalised complaints-handling process by the ODPP (see Recommendations 1–3, 7, 9, 11, 13–15 and 17) should all improve support to victims of abuse.

Are resources within the criminal justice system adequate to handle sexual offence allegations?

While limited resourcing was raised as a significant impediment to the ability of each agency to handle sexual offence matters more effectively, the Commission noted management issues that, if dealt with appropriately, may overcome some of the concerns raised.

Are police adequately trained to handle sexual offence allegations?

Recommendations 1–3 call for specialist training for all police officers working in the specialist units.

Can the communication skills of police officers handling sexual offences be improved?

The Commission notes that the QPS appears to have adequate policies for interviewing victims of sexual abuse, but adherence to these policies may be difficult when resources are unavailable and specialist training is limited. Training for all specialist sexual offence police officers should, therefore, enhance the communication process (see Recommendations 1–3). Police officers should also make every effort to ensure that interviewing practices adhere to the requirements of existing QPS policies and the principles of the *Criminal Offence Victims Act 1995* (Qld) (COVA) and that these requirements are carefully monitored.

How the criminal justice system handles sexual offences is a vast and controversial topic. Yet, considering the breadth of issues raised, there was surprising consistency in the suggestions for reform.

Can police investigations be improved?

Training of all specialist sexual offence officers, a review of the QPS's regional response to sexual offences, improved supervision and review practices by the QPS and more formalised involvement by the ODPP in all sexual offence matters should enhance the quality of police investigations. See Recommendations 1–3 and 7–10.

Can legal advice to police about sexual offences be enhanced?

Training for all specialist sexual offence officers and brief checkers/managers will enhance the understanding of relevant legal issues by police officers (see Recommendations 1, 2 and 8). A review of the QPS's Operational Procedures Manual (OPM) about police decision-making processes will also clarify some concerns about the required processes (see Recommendation 4). Formal liaison between the QPS and the ODPP about the progression of sexual offence matters will enhance the timeliness of legal advice by the ODPP to the QPS (Recommendations 9, 10 and 13–15). The Commission is unable to make more specific recommendations about police or ODPP representation at committal until the committals process has been adequately reviewed.

Can the arrest process for sexual offence matters be improved?

Recommendations 1–3 may address these two concerns regarding the arrest process:

- ▶ the attitudes of some arresting officers towards some accused
- ▶ the potential use of a Notice to Appear for some people accused of sexual offences rather than the full arrest process.

Can human resourcing issues be improved for police officers who handle sexual offence matters?

Human resourcing issues relevant to the specialist sexual offences squads of the QPS (including recruitment, rotation, rank, career advancement and succession planning) were raised by many police as important issues that can affect their ability to work effectively within these units. Recommendations 5 and 6 call for the QPS to review these processes.

How can the regional response to sexual offences by police be enhanced?

Recommendation 8 calls for the QPS to assess the most appropriate regional response to allegations of sexual abuse.

Can the review and supervision processes for sexual offence matters by the QPS be better?

Recommendations 1–3 and 8–10, which call for additional training for sexual offence officers and brief checkers and brief managers, regular meetings between the QPS and the ODPP about sexual offence matters under investigation and before the courts and an expansion of the role of the Prosecution Review Committee, should enhance the current review and supervision of sexual offence matters by the QPS.

Would the ODPP benefit by broadening its training to incorporate the non-legal aspects of sexual offences?

Recommendation 11 calls for broader sexual offence training for ODPP legal staff and Victim Liaison Officers.

How effective are the ODPP's case management processes?

The Commission suggests that the ODPP make case management of sexual offence matters, including case preparation, continuity of case representation and briefing out practices, a priority.

How can the ODPP's decision-making processes for sexual offence matters be made more transparent?

The Commission recommends

The report provides a broad overview of the issues raised by the Inquiry and encourages members of the criminal justice system to explore the issues in greater depth.

documentation of all decision-making processes for sexual offence matters. See Recommendations 12–16.

How can communication between the ODPP and the QPS and the complainant be improved?

Recommendations 9–15, which call for regular meetings between the QPS and the ODPP and formal documentation of all decision-making processes, including the preparation of written reasons for the discontinuance of sexual offence matters, will enhance communication between the agencies and with complainants.

How can dealings with the defence by the ODPP be more transparent?

The Commission recommends documentation of all decision-making processes relevant to the defence. See Recommendations 12 and 16.

How relevant is resourcing of the ODPP to the handling of sexual offence matters?

While acknowledging the concerns raised by the ODPP regarding funding, it is the Commission's view that the Office should in the first instance make every effort to implement improved management practices.

How effectively are victims' rights addressed by the ODPP?

A combination of more broadly based training for ODPP staff, formalised communication strategies between the ODPP and the QPS and complainants about all sexual offence matters, a review of the role of Victim Liaison Officers and the implementation of a formal complaints-handling process by the ODPP will better recognise victims' rights. See Recommendations 11, 13–15, 17 and 18.

Should the identity of the accused in a sexual offence matter be suppressed?

The Commission believes that the identity of an accused in a sexual offence matter should be suppressed. See Recommendation 19.

How adequate are the existing legal prohibitions on the publication of the identity of an accused?

The Commission identified some gaps in the prohibitions of the *Criminal Law (Sexual Offences) Act 1978* (Qld) and the police OPM and Media Guidelines regarding the publication of the identity of an accused. Recommendations 20–22 identify how these gaps can be closed.

Should the prohibition on publication of the identity of the accused be extended beyond the committal proceedings?

The Commission recommends that there be no change to the current provisions of the *Criminal Law (Sexual Offences) Act 1978* (Qld) — that is, that the prohibition on the publication of the identity of the accused not be extended beyond committal for trial or sentence. See Recommendation 23.

Should alternatives to the criminal justice system be considered for sexual offences?

Many submissions to the Inquiry suggested that, given the current difficulties surrounding the criminal prosecution of sexual offences, alternatives to the criminal justice system ought to be considered. Chapter 10 of the full report overviews those submissions and some of the research literature on the topic.

The next step

The Commission strongly encourages the key players in the criminal justice system to act upon the recommendations in this report. To assess progress, the Commission proposes that it review the implementation of the recommendations in two years' time. (See Recommendation 24.)

- 1** — That specialist sexual offence training be required for all officers working for Taskforce Argos, the SCAN (Suspected Child Abuse and Neglect) teams, the Child and Sexual Assault Investigation Unit, the Criminal Investigation Branch and the Juvenile Aid Bureau in Brisbane and in the regions, and for police prosecutors working with sexual offences.
- 2** — That ICARE (Interviewing Children and Recording Evidence) training be required for all officers working in the specialist child sexual offence squads.
- 3** — That the QPS convene an interagency/cross-departmental working party (including representatives from the ODPP, the Department of Families and Queensland Health) to assess desirable improvements to sexual offence course content.
- 4** — That the QPS OPM be rewritten to distinguish clearly between the three decision-making processes relevant to police prosecution: the initial decision to lay charges, summary prosecutions, and the prosecution of committal hearings for indictable matters.
- 5** — That the QPS review the recruitment, selection and rotation policies of all specialist sexual offence squads, ensuring that adequate supervision and command structures are in place and that career opportunities are provided for officers working in these squads.
- 6** — That the QPS review succession-planning processes and policies for all sexual offence squads.
- 7** — That the QPS review the statewide demands made by reported sexual offences on the Service to assess the most appropriate regional response. Given the high rates of reported sexual offences in Far Northern Region, establishment of a specialist sexual offence squad in that Region may need to be given priority.
- 8** — That it be a requirement for brief checkers and brief managers of the QPS to undergo additional relevant legal and sexual offence training, as recommended for police officers working in the specialist sexual offence units.
- 9** — That senior managers of the QPS and the ODPP reinstate regular meetings to discuss the progression of sexual offence matters under investigation and before the courts.
- 10** — That the QPS work closely with the ODPP to expand the role of the Prosecution Review Committee. The role should include a review of:
- ▶ all sexual offence matters that fail at committal (whether it be the responsibility of the police or the ODPP at that stage)
 - ▶ all sexual offence matters that are discontinued by the ODPP
 - ▶ all sexual offence matters that fail before the higher courts (including the Court of Appeal)
 - ▶ the role of the investigating/arresting officer in the matters
 - ▶ the role of the police prosecutor in the matters.
- 11** — That all legal staff and Victim Liaison Officers at the ODPP receive training in aspects relevant to sexual offending such as the nature and extent of abuse, child development, the disclosure and reporting of abuse, interviewing techniques and historic cases.
- 12** — That the ODPP implement procedures to ensure that all decision-making processes are supported by relevant documentation and completed by the responsible officer.
- 13** — That, in collaboration with the QPS, the ODPP develop written policies for formal communication with police investigators and their supervisors about all sexual offence matters. The policy should include the provision of a written summary of the reasons for decisions that are made about each case prepared by a senior legal officer of the ODPP.
- 14** — That the ODPP develop formal policies for communicating with complainants in sexual offence matters. As part of these formal policies, a senior legal officer of the ODPP should be required to prepare a written summary of the reasons for decisions that are made about the case.
- 15** — That the QPS and the ODPP develop and agree to formal protocols that identify who will contact the complainant about the decisions that are made in every sexual offence matter.
- 16** — That the ODPP develop and enhance written protocols and procedures for communicating with the defence in all sexual offence matters.
- 17** — That the Department of Justice and the Attorney-General formally review the roles and functions of Victim Liaison Officers employed by the ODPP with a view to enhancing the response of the Office to complainants in sexual offence matters.
- 18** — That the ODPP implement a complaints-handling process. In so doing, the Office should consider established guidelines such as those developed by the Queensland Ombudsman (2003).
- 19** — That the current provisions in the *Criminal Law (Sexual Offences) Act 1978* (Qld) that restrict the publication of the identity of a person charged with a sexual offence be retained.
- 20** — That the definition of a ‘prescribed sexual offence’ contained in section 3 of the *Criminal Law (Sexual Offences) Act 1978* (Qld) be deleted and replaced with a new definition modelled on the definition of a ‘sexual offence’ that appears in section 4 of South Australia’s *Evidence Act 1929*.
- 21** — That section 10(3)(b) of the *Criminal Law (Sexual Offences) Act 1978* (Qld) be amended to include a prohibition on naming a person who is under investigation by the police, with the proviso that identifying information about a suspect can be released if it is necessary to ensure the safety of a person or the community and/or to help locate the suspect or the complainant or otherwise assist the investigation.
- 22** — That the QPS amend the references in paragraph 1.10.11 (xix) of the OPM that relate to the name of a defendant being disclosed ‘following an appearance in open court’, so that they are consistent with the various prohibitions on naming a defendant set out in the *Criminal Law (Sexual Offences) Act 1978* (Qld). Paragraph 1.10.11 (xix) should therefore read: ‘Members are not to supply information to the media that identifies a defendant charged with a “prescribed sexual offence” prior to the defendant being committed for trial or sentence’. A similar amendment should also be made to the Queensland Police Media Guidelines.
- 23** — That there be no change to the current provisions within the *Criminal Law (Sexual Offences) Act 1978* (Qld) that prohibit the publication of the identity of a person charged with a ‘prescribed sexual offence’ until the person has been committed for trial or sentence.
- 24** — That the CMC review the implementation of the Commission’s recommendations arising from the Inquiry into the Handling of Sexual Offence Matters by the Criminal Justice System, and report to Parliament in two years’ time.