CRIMINAL JUSTICE
COMMISSION

SUBMISSION TO THE PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE ON ITS REVIEW OF THE CRIMINAL JUSTICE COMMISSION'S ACTIVITIES

JULY 1994

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APPENDICES

GLOSSARY

ABCI	Australian Bureau of Criminal Intelligence
AFP	Australian Federal Police
ARC	Australian Research Council
ASC	Australian Securities Commission
ATSI	Aboriginal and Torres Strait Islander
BCI	Bureau of Criminal Intelligence
BCIQ	Bureau of Criminal Intelligence Queensland
CID	Criminal Intelligence Database
CJC or the Commission	Criminal Justice Commission
COI/Fitzgerald Inquiry	Commission of Inquiry
CPD	Corruption Prevention Division
CSC	Corrective Services Commission
CTS	Counter-Terrorist Section
Cwlth	Commonwealth
EARC	Electoral and Administrative Review Committee
FBI	Federal Bureau of Investigation
FOI	Freedom of Information
GSO	Government Statistician's Office
ICAC	Independent Commission Against Corruption
JOCTF	Joint Organised Crime Task Force
LRC	Law Reform Commission
MDT	Multi-disciplinary Team
MOU	Memorandum of Understanding
NCA	National Crime Authority
NCADA	National Campaign Against Drug Abuse
NSWCC	New South Wales Crime Commission
NWPP	National Witness Protection Program

OMCG	Outlaw Motorcycle Gang
OMD	Official Misconduct Division
OSP	Office of the Special Prosecutor
PCJC or the Committee	Parliamentary Criminal Justice Committee
PEAC	Police Education Advisory Committee
PJC	Parliamentary Joint Committee
PSMC	Public Sector Management Commission
QCSC	Queensland Corrective Services Commission
QPIN	Queensland Police Intelligence Network
QPS	Queensland Police Service
QUID	Queensland Intelligence Database
SCC	State Crime Commission
the Report/ Fitzgerald Report	*Report of a Commission of Inquiry Pursuant to Orders of Council 1989*
the Act	*Criminal Justice Act 1989*
WAG	Whistleblowers Action Group
WITSEC	Witness Security Unit
WSP	Witness Security Program

CHAPTER 1 – OVERVIEW

INTRODUCTION

The Criminal Justice Commission presents this Report approximately 22 months after it completed its last submission on the review of its operations. This document is being submitted as the Parliamentary Criminal Justice Committee (PCJC) prepares its three-year review, mandated under s. 118 (1)(f) of the *Criminal Justice Act 1989*. While this review is not due to be completed until 1995, the CJC has met the deadline of 29 July 1994 set by the PCJC for submission of this Report.

The PCJC's previous reviews of the operations of the PCJC and the Commission (Report Nos. 13 and 18) were exacting and comprehensive reviews of the Commission's operations and performance. They addressed the work of each of the Commission's Divisions in detail and, like the Commission's submission, focussed very deliberately on related, and sometimes larger, issues of concern to the Commission, the Parliament, and the community at large. Consideration of these matters gave the reports a somewhat broader focus than an annual report. That distinction will be maintained and emphasised in this submission, which, although being prepared simultaneously with the 1993/94 Annual Report, concentrates largely on strategic and procedural issues, leaving operational and audit considerations to the Annual Report.

The PCJC has advised that it does not wish to limit or define the scope of the Commission's submission on the Review by nominating specific issues to be addressed. Instead, the Committee has sought a comprehensive analysis of all aspects of the operations of the Commission which addresses areas of concern.

Since the PCJC's last major review was tabled in November 1992, many issues raised in that review need not be raised again. Rather, this submission concentrates on the Commission's progress in implementing the recommendations contained in the previous PCJC reports.

The Commission is aware that the PCJC will be receiving submissions on the Review from interested parties and wishes to confirm its request that it be given the opportunity to respond in full to any concerns raised in those submissions.

It is worth noting at this point that an Inter-Departmental Working Group comprising officers from the Office of Cabinet, the Queensland Police Service (QPS) and the Department of Justice and Attorney-General has been established to review the

Criminal Justice Act 1989. However, neither the Commission nor the PCJC is represented on the Working Group.

It is also worth noting that this submission does not address the Misconduct Tribunals other than in the context of the implementation of previous PCJC recommendations. This is because the Commission has been advised that the Tribunals are to be transferred to the District Court, and legislation is currently being prepared to achieve this.

BACKGROUND

The Criminal Justice Commission is a direct descendant of the Fitzgerald Commission of Inquiry and was constituted with the express ideal of being free from Executive control and is therefore primarily accountable to the people of Queensland via the all-party Parliamentary Committee.

On 31 October 1989, the *Criminal Justice Act 1989* (the Act) received Royal Assent and that date may be considered the starting point for the Commission. However, major parts of the Act did not take effect until 22 April 1990, when the Commission, excluding the Corruption Prevention Division, began operating in its present format. Accordingly, most functions of the Commission have therefore been operating for just over four years.

Currently there is no other justice agency operating in Australia with the Commission's sweep of functions and responsibilities, and the Commission is conscious of the high levels of accountability that it is required to maintain to ensure that the public retains its confidence in its operations.

GOALS

As recommended in the Report of a Commission of inquiry Pursuant to Orders in Council (Fitzgerald Report), the Commission is permanently charged with monitoring, reviewing, co-ordinating and initiating reform of the administration of criminal justice and fulfilling those criminal justice functions not appropriately carried out by the police or other agencies. This is reflected in the Commission's Mission Statement – 'To promote justice and integrity in Queensland'.

Accordingly the Commission is committed to the tasks of:

- safeguarding the integrity of public administration

- improving the criminal justice system
- providing an effective witness protection program
- combating organised and major crime
- preventing corruption in public sector organisations
- promoting public understanding of and informed discussion on criminal justice issues.

These goals were detailed in the Commission's *Corporate Plan 1993-1996*, published in December 1993. The Commission is mindful of its obligations under the Public Finance Standards to regularly review its Corporate Plan and ensure that its goals and strategic direction are consistent with its legislative charter.

FUNCTIONS AND RESPONSIBILITIES

The Commission's statutory functions and responsibilities are extremely diverse yet at the same time quite specific. To summarise them risks the loss of accuracy and precision and therefore they are presented in full in Appendix A, which outlines the programs and sub-programs under which the Divisions making up the Commission are tasked.

It should be emphasised that the Divisions work closely together in addressing these functions and responsibilities. As is revealed by this submission, there are important linkages between the Divisions that promote the ability of the Commission to realise its corporate goals and the effectiveness of its Divisions in fulfilling their functions and responsibilities.

COMMISSION MEMBERSHIP

The Commission is composed of a Chairperson and four part-time Commissioners appointed by the Governor-in-Council on the recommendation of the Minister.

The Commissioners bring a broad range of professional and practical experience to the Commission, playing an active role in assisting and advising the Chairperson and CJC staff, especially within their primary areas of expertise (see Appendix B). Since the last three year review submission was compiled, the membership of the Commission has included the following:

Chairperson:

Sir Max Bingham QC – term ended 30 November 1992

Mr Robin O'Regan QC – appointed 1 December 1992

Commissioners:

Dr Janet Irwin AM – term ended 7 March 1993

Mr Lewis Wyvill QC – appointed 27 August 1992

Professor John Western – term ended 20 March 1993; reappointed (acting) 26 March 1993 – term ended 31 July 1993; reappointed (acting) 12 August 1993 – term ended 30 April 1994

Mr John Kelly – term ended 7 March 1994

Mr Barrie Ffrench – appointed 1 August 1993

Professor Ross Homel – appointed 8 March 1994

Mr Robert Bleakley – appointed 1 May 1994

DIVISIONAL STRUCTURE

The Commission comprises an Executive and five operational Divisions:

- Official Misconduct
- Intelligence
- Witness Protection
- Research & Co-ordination
- Corruption Prevention.

These operational Divisions are assisted by the Corporate Services Division and the Office of General Counsel (which has the administrative responsibility for the Misconduct Tribunals).

The Divisional Directors are:

Dr David Brereton – Director, Research and Co-ordination Division

Mr Graham Brighton – Executive Director

Mr Robert Hailstone – Director, Corruption Prevention Division

Mr Marshall Irwin – General Counsel

Mr Mark Le Grand – Director, Official Misconduct Division

Assistant Commissioner John McDonnell – Director, Operations and Witness Protection Division

Mr Paul Roger – Director, Intelligence Division

The permanent staff establishment of the Commission is 263 employees – 171 civilians and 92 Police Officers – whose expertise and experience complements the wide range of Commission responsibilities (Tables 1.1 and 1.2).

TABLE 1.1: REPORTING STRUCTURE AND ORGANISATION OF THE CJC

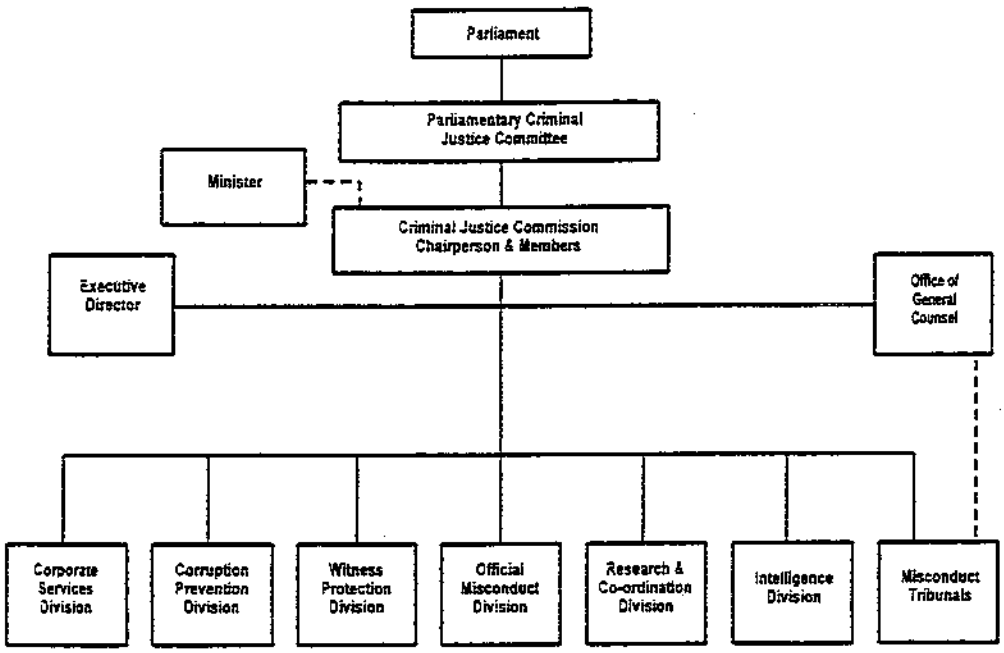

TABLE 1.2: COMMISSION STAFFING (MALE/FEMALE BY DIVISION) COMMISSION ESTABLISHMENT AS AT 30 JUNE 1994

	Approved Establishment	Male	Female	Total
Executive	2	1	1	2
General Counsel & Misconduct Tribunals	8	4	3	7
Official Misconduct	132	91	26	117
Witness Protection	29	22	6	28
Research & Co-ordination	19	3	14	17
Corruption Prevention	6	4	2	6
Intelligence	24	13	9	22
Corporate Services	43	25	16	41
Total	263	163	77	240

Note: Due to vacancies on 30 June, the total number of employees will not equal the establishment number

CHAPTER 2 – OFFICIAL MISCONDUCT DIVISION

BACKGROUND

Much of the focus of the Commission of Inquiry headed by (then) G.E. Fitzgerald QC and the resultant report was upon the structural, organisational and cultural malaise of the QPS. However, Fitzgerald recognised that the QPS is at the threshold of the administration of criminal justice and that official misconduct by police officers can cripple the criminal justice system. He noted in his report that official misconduct including corruption can involve not only police but Ministers of the Crown, parliamentarians, judges, law officers and public servants of all types (see p. 285).

Further, Fitzgerald acknowledged the growing problem of organised crime which he described as the 'Hydra', the nine headed serpent of Greek mythology which grew two heads for every one cut off. He opined that the term 'organised crime' embraced serious crime committed in a systematic way involving a number of people and substantial planning and organisation, sophisticated methods and techniques. He expressed the view that organised crime has never anywhere in the world been brought under control by a piecemeal process and recommended an integrated comprehensive and wide-ranging response (see pp. 161-164).

Fitzgerald's recommended solution was the creation of a new body independent of executive controls for the administration of criminal justice in Queensland, namely the Criminal Justice Commission. The elements of that Commission which would address Fitzgerald's findings in respect of official misconduct and organised crime were the following Divisions:

- the Official Misconduct Division (OMD) – the investigative arm of the Commission

- the Intelligence Division – a criminal intelligence service as the hub of an integrated approach to major crime, in particular, organised crime

- the Witness Protection Division – a professional witness protection unit to assure the safety of witnesses upon whose information and testimony the criminal justice system depends.

In many respects these three Divisions act together to effectively discharge the functions of the Commission, and the success of the Commission in counteracting official misconduct and organised and major crime depends to a substantial degree upon an appropriate level of integration and co-operation. However, to assist the

Parliamentary Committee (the Committee) in its review of the Commission's operations, the operations of the various Divisions have been separated in this submission.

STRUCTURE

The Committee has a close knowledge of the structure and operations of the OMD and, indeed, the Commission's Annual Reports and its previous submissions to the Committee in respect of past reviews and inquiries by the Committee have dealt with the structure and processes of the Division in great detail. However, the Commission is conscious of the Committee's past practice (which the Commission supports as being in accordance with the principles of natural justice) of appending the Commission's submission to its final report. Of course some of the material presented for consideration is confidential and relates to current investigations or prosecutions that are in progress. The Commission would appreciate the opportunity to nominate sections of the report which should not be made public at the time the Committee intends to publish the Commission's submission.

In view of the fact that this submission may be published and to provide some framework for the discussion which follows, the Commission will briefly reiterate the structure and processes of the Division.

The OMD contains about 50% (132 of 263) of the resources of the Commission and, by comparison with the QPS, represents in personnel and funding terms about 2% of the resources available to the QPS. The staff of the Commission assigned strictly to OMD functions approximates 132 persons, the make up by discipline being:

- seconded police investigators – 48
- contract investigators – 12
- seconded police surveillance officers – 16
- police and civilian technical officers – 3
- lawyers – 19
- accountants (financial analysts and assistants) – 8
- complaints officers – 6

- registry and support personnel – 20.

The Division's operational personnel to support personnel ratio is in the order of 6 to 1. This compares more than favourably with organisations such as the National Crime Authority (NCA) and the Independent Commission Against Corruption (ICAC) in New South Wales.

The Division is split physically approximately 50/50 between the Complaints Section and the Multi-disciplinary Teams (MDTs). The Complaints Section, as the name suggests, receives and processes all complaints or information concerning misconduct within the public sector brought to the notice of the Commission. It is subdivided into a series of functional units, namely:

- the Assessment Committee
- the Assessment Unit
- two Complaint Investigation Teams
- the Review Unit
- the Complaints Registry.

For the purposes of this overview it is sufficient to record that complaints are currently being received at an annual rate of close to 4,000 per year and that over the four years of its operation (22 April 1990 to 30 June 1994), the Commission has received 12,997 complaints. At 30 June 1994 there were 357 of these complaints yet to be finalised. This is the lowest figure ever, down from a peak of 818 at the end of March 1991.

The following are the key complaints statistics to 30 June 1994.

• Standard Complaints Registered (22 April 1990 to 30 June 1994)	9,432
• QPS Breach of Discipline Matters (22 April 1990 to 30 June 1994)	3,565
	12,997
• Standard Complaints Registered (June 1994)	177
• QPS Breach of Discipline Matters (June 1994)	132
	309

- Standard Complaints Finalised at 30 June 1994 9,075
- Standard Complaints Current at 30 June 1994 357

The current rate of complaint receipt is 20% higher than in 1993, and the rate of receipt for each year until the present year showed a 30% per annum average annual rise.

The Commission would contend that members of the public who are the main source of complaints to the Commission would not approach the Commission unless the Commission's processes were credible. Although difficult to manage, this rate of complaint increase does represent a substantial vote of public confidence in the Commission. Experience with the former Police Complaints Tribunal of the QPS demonstrates that people do not complain to bodies which lack credibility and are not seen as effective (see Fitzgerald Report, pp. 289-295).

The MDTs which account for the other half of the OMD deal with a variety of matters, in particular:

- the more complex or larger complaint investigations
- investigations which require substantial access to the Commission's compulsory powers
- investigations which require specialist input such as financial analysis, mobile and electronic surveillance and/or covert operations
- investigations into organised or major crime which are the responsibility of the Commission under the provisions of section 23(f) of the *Criminal Justice Act 1989,* namely those which are not appropriately or effectively discharged by the QPS
- the support of public inquiries conducted by the Commission.

These teams, as the name suggests, are composed of investigators, lawyers and accountants, supported by intelligence analysts. They are co-located and they involve themselves in more intensive investigations of suspected official misconduct, corruption or major or organised crime. There are five teams, counting the Proceeds of Crime Team, although one team has been incorporated into the Joint Organised Crime Task Force (JOCTF), a co-operative venture with the QPS established to tackle a number of organised crime groups. This initiative is discussed more fully later.

ACHIEVEMENTS

THE EFFECTIVENESS OF THE OMD

It occurs to the Commission that the Committee, in undertaking its review of the Commission after four years of operation, will wish to determine whether the Commission has been effective in dealing with the problems reported upon in the findings of the Commission of Inquiry – a fundamental and logical question to pose. In responding to this question, the Commission briefly refers to the main factual findings and/or recommendations of the Fitzgerald Report relevant to the functions of the OMD and juxtaposes the current situation as measured by the information available to it.

INVESTIGATIONS OF OFFICIAL MISCONDUCT

FITZGERALD FINDINGS CONCERNING MISCONDUCT BY POLICE

The Police Code (pp. 202-205)

Fitzgerald reported that under the Police Code 'it is impermissible to criticise other police' and that the police code requires that police 'not enforce the law against other police, nor co-operate in any attempt to do so, and perhaps even obstruct any such attempt'.

- There is strong evidence that the work of the Commission together with the actions taken by the QPS is bringing about a substantial cultural realignment within the QPS. Misconduct and corruption is being exposed and reported to the Commission, and investigations undertaken by the Commission are being actively assisted.

  Complaints by police have increased from the negligible numbers reported upon by Fitzgerald prior to the establishment of the Commission to 14.6% of all complaints of misconduct made against Police. The following table illustrates the extent of the shift from the Fitzgerald finding that 'it is impermissible to criticise other police' to the current situation.

TABLE 2.1: COMPLAINTS BY POLICE AS A PERCENTAGE OF TOTAL MISCONDUCT AGAINST POLICE REPORTED TO THE CJC

	Complaints from Commissioner	Complaints from other Police	Total Complaints from Police
90/91	5.7	4.4	10.1
91/92	2.0	8.0	10.0
92/93	1.2	12.1	13.2
93/94	0.4	14.2	14.6

When calculating complaints lodged by police officers against other police officers the Commission has not included those incidents which police officers are obliged to report to the Commission irrespective of whether the reporting officer suspects any other officer of misconduct, for example, high speed motor vehicle pursuits, deaths or attempted suicides in custody or any serious injury resulting from police action.

The Commission believes that this is indicative of a significant change in police attitudes – most police are no longer prepared to turn a blind eye to misconduct by their fellows. There is an increasing acceptance among police of the Commission's role.

Police 'Verballing' (p. 206)

Fitzgerald reported upon an endemic problem, perhaps of epidemic proportions, of what became known as 'verballing' within the QPS:

> Verballing, or the fabrication of or tampering with evidence, arises out of frustration and contempt for the criminal justice system. It is common, and engaged in by many officers who are otherwise honest. (p. 363).

Conversations with lawyers practising in the criminal courts at the time readily corroborate Fitzgerald's findings.

A lot of the early work of the Commission was taken up with the investigation of such allegations. However, after four years of operation the Commission can report that the incidence of verballing, in particular, the manufacture or falsification of evidence has significantly reduced.

Lest it be said that this has simply resulted from the advent of mandatory tape-recording of confessional statements and admissions, the Commission would point out that the requirement to tape-record evidence only relates to indictable offences and not to summary hearings in Magistrates Courts, which represent the vast majority of criminal prosecutions.

Recent figures taken out by the Commission in response to a request for information by the Shadow Minister for Police and Corrective Services, the Honourable Russell Cooper MLA, illustrate just how uncommon such complaints have become.

TABLE 2.2: COMPLAINTS ALLEGING POLICE 'VERBALLING' (22 APRIL 1990 - 31 MARCH 1994)

Investigated by the CJC and found to be not substantiated	8
Investigated by the CJC and disciplinary action taken	1
Referred to QPS for investigation and found not to be substantiated	3
Investigated by the CJC and found to be not substantiated but disciplinary action taken on related matters	1
Referred to QPS for investigation and found not to be substantiated but disciplinary action taken on related matters	1
Assessed as unable to be productively investigated or not requiring further action	3
Matters canvassed and determined in Courts	3
Out of CJC's jurisdiction (not QPS)	2
Complainants refused to provide further information	2
Complaints withdrawn	1
Vexatious complaints	1
Alleged event occurred prior to 22 April, 1990 - the establishment of the Complaints Section	4
Current investigations	1
Total	31

The Commission recognises that these figures arguably may not represent the complete picture, although the Commission is confident that they are at least indicative of the current situation. Given that the Commission receives thousands of complaints annually from every region of the State, and given that it has achieved substantial success in investigating allegations of police misconduct, the Commission would submit that it cannot be credibly asserted that persons are being convicted upon fabricated evidence without complaint to the Commission.

These facts represent significant evidence that much has been achieved in restoring the integrity of the QPS in Queensland.

The Failure of the Internal Investigations Section (pp. 288-289)

Probably nowhere in the Fitzgerald Report were the Commissioner's comments more scathing than in his report upon the failure of the Police Internal Investigations Section. He summarised the activities of the now disbanded Section as:

> . . . woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralised whatever prospect there might have been that allegations against police would have been properly investigated. The Section's effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.
>
> The Internal Investigations Section has provided warm comfort to corrupt police. It has been a friendly sympathetic, protective, and inept overseer. It must be abolished.

Fitzgerald's review of the Police Complaints Tribunal (pp. 289-293) was only slightly less acerbic. He reported that the number of complaints lodged with the Police Department fell from 750 in 1980/81 to about 475 in 1985/86. At page 81 he found that the percentage incidence of criminal and departmental charges laid as a result of Internal Investigation Section investigations was a very low 2.2% in 1986/87.

The Commission was inundated with complaints upon the establishment of the Complaints Section on 22 April 1990. In the first three years of its operation complaints received by the Commission increased by an average of 30% per year until the current year when the increase has levelled off to approximately 20%. To 30 June 1994, the Commission had received 12,997 complaints to date, of which about 21% have been referred to the QPS or other agencies for investigation on behalf of the Commission, and 9,075 investigated to finality by the Commission (see Appendix C).

Further, investigations undertaken by the Commission led to criminal or disciplinary action at a rate many times that of the 1986/87 level.

The tables below show criminal and disciplinary charges recommended by the Commission year by year since the Commission's establishment:

TABLE 2.3: PERSONS CHARGED BY YEAR

Type of Charge Recommended	89	90	91	92	93	94	Total
Criminal - Drugs	20	50	8	37	48	3	166
Criminal - Other	1	15	84	40	63	33	236
Disciplinary Action	1	61	269	203	208	97	839
Official Misconduct	0	6	19	8	8	1	42
Total	22	132	380	288	327	134	1,283

Note: data for 1994 are for a partial year.

TABLE 2.4: DESCRIPTION OF PERSONS CHARGED BY CHARGE TYPE

Type of Charge Recommended	QPS	Public Sector	Other	Total
Criminal - Drugs	5	0	161	166
Criminal - Other	90	42	104	236
Disciplinary Action	699	140	0	839
Official Misconduct	34	8	0	42
Total	828	190	265	1,283

TABLE 2.5: CHARGES RECOMMENDED BY YEAR

Type of Charge Recommended	89	90	91	92	93	94	Total
Criminal - Drugs	68	235	34	291	240	4	872
Criminal - Other	1	33	250	206	95	234	819
Disciplinary Action	3	88	399	282	325	107	1,204
Official Misconduct	0	11	20	9	8	1	49
Total	72	367	703	788	668	346	2,944

Note: data for 1994 are for a partial year.

These tables refer to calendar years. The statistics for calendar year 1994 represent the position at 30 June, 1994. Many investigations were current at that time and are not reflected in the statistics.

Further, the Commission inherited complaints reported to the Police Complaints Tribunal which had been outstanding for many years, some as old as six years.

Early delays in the investigation of complaints resulted from the need to deal with such ancient matters, the need to recruit suitably qualified investigative staff and the early avalanche of complaints which overwhelmed the Commission.

The current position is very satisfactory and has been improving since May 1992 when the Commission was given a discretion whether to initiate or continue an investigation; two-thirds of complaints are now dealt with within four weeks of receipt. This should be compared to the 21% of matters which are referred back to the QPS for investigation on behalf of the Commission (the more minor matters), where the investigation time varies from 18 to 28 weeks depending upon the police region to which each is assigned.

PROCEDURAL RECOMMENDATIONS

The Commission through investigations of alleged official misconduct has highlighted many corrupt schemes and many departmental deficiencies in audit and procedures. The Commission has made a total of 202 separate substantive and procedural

recommendations arising from its complaints investigations, both to the QPS and to government departments (Table 2.6).

TABLE 2.6: PROCEDURAL RECOMMENDATIONS MADE (1989-1994)

Year	89	90	91	92	93	94	Total
Procedural Recommendations	0	28	53	37	54	30	202

Note: data for 1994 are for a partial year.

MEDIATION AND INFORMAL RESOLUTION

The Commission's policy is to support and enhance the disciplinary process within the QPS. It has sought to achieve this by referring minor matters back to the QPS for investigation (subject to review of those investigations), thus fostering greater responsibility for personnel management within the QPS. As the reform process has gathered pace within the QPS, and attitudes have changed, the Commission has raised the threshold of matters being referred back so that some 21% of all complaints received are referred to the QPS for investigation.

The Commission next introduced the mediation of complaints through the auspices of the Community Justice Program of the Attorney-General's Department. A pilot scheme was conducted in South-East Queensland for six months in 1992. Thereafter the scheme was adopted and has been progressively extended to regional areas.

The Commission more recently introduced a further initiative jointly with the QPS involving a system of Informal Resolution which has been practised with success in the United Kingdom since the mid-1980s.

In essence, this program devolves responsibility for dealing with minor complaints to properly trained local supervisors. It has the advantages of speed of resolution and an enhancement of the management role of line supervisors. However, it must be accompanied by the necessary training and certification together with checks on abuse through review by an outside body.

In the United Kingdom it is estimated that up to 50% of complaints against police are dealt with in this way. Given that 70% of complaints received by the Commission

are complaints against police, it has the potential to radically alter the profile of the investigation of disciplinary offences and minor misconduct.

The potential benefits flowing from the introduction of this system are great, in particular in respect of enhanced personnel management and the saving of many thousands, perhaps tens of thousands of hours of senior investigators' time; clearly a boon to the QPS.

Research undertaken by the Commission's Research and Co-ordination Division shows that the introduction of informal resolution has:

- significantly reduced the amount of time required to finalise complaints of a minor nature against the police
- markedly improved complainant satisfaction with the complaints investigation process.

Table 2.7 compares the median[1] and average time taken to process complaints of a minor nature under the old and new system. The table shows that, on average, the introduction of informal resolution has more than halved the time required to finalise such matters. The Commission is confident that, with some additional refinements, it will be possible to reduce average complaint processing times still further.

TABLE 2.7: TIME TAKEN BY POLICE TO DEAL WITH ALLEGATIONS

	Median (days)	**Mean (days)**	**90th Percentile (days)**
Minor Allegations Formally Resolved (n=2322)	112	138	272
Allegations Resolved via Informal Resolution (n=581)	55	64	124

[1] The *median* is the value above and below which one-half of the observations fall. The *mean* is the average of the values.

As part of its evaluation of the new system, the Research and Co-ordination Division also surveyed complainants whose complaints were handled formally by the QPS and those who participated in an informal resolution.

The key findings are that:

- 75% of those complainants whose complaint was informally resolved said that they were very or fairly satisfied with the way the complaint was handled, compared with only 39% of those whose complaint was formally investigated (Table 2.8).

- 59% of the informal resolution complainants said that they were very or fairly satisfied with the outcome, compared with only 26% of those whose complaint was formally investigated (Table 2.9).

- 77% of the informal resolution complainants said that they were kept very or fairly informed during the process, compared with only 33% of those whose complaint was formally investigated (Table 2.10).

TABLE 2.8: COMPLAINANTS' SATISFACTION WITH COMPLAINT INVESTIGATION OR RESOLUTION

	Formal Investigation Sample % (n=224)	**Informal Resolution Sample % (n=191)**
Very Satisfied	16.1	36.1
Fairly Satisfied	23.2	39.2
Fairly Dissatisfied	19.2	13.6
Very Dissatisfied	41.5	11.1
Total	100	100

TABLE 2.9: COMPLAINANTS' SATISFACTION WITH THE OUTCOME OF COMPLAINT

	Formal Investigation Sample % (n=219)	Informal Resolution Sample % (n=190)
Very Satisfied	8.7	17.4
Fairly Satisfied	16.9	41.1
Fairly Dissatisfied	16.0	18.9
Very Dissatisfied	58.4	22.6
Total	100	100

TABLE 2.10: HOW INFORMED COMPLAINANTS WERE KEPT DURING INVESTIGATION

	Formal Investigation Sample % (n=225)	Informal Resolution Sample % (n=192)
Very Informed	13.8	34.9
Fairly Informed	19.5	42.2
Fairly Uninformed	18.7	14.6
Very Uninformed	48.0	8.3
Total	100	100

FITZGERALD FINDINGS CONCERNING MISCONDUCT BY OFFICIALS OTHER THAN POLICE

Fitzgerald reported (p. 299) that the central features of police misconduct similarly characterise other manifestations of misconduct within the wider public sector and referred to a variety of public offices.

- There are 170,000 people employed directly in the public sector in Queensland and complaints in this area have risen steadily from about 20% up to 30% of total complaints.

  The Commission has had a substantial impact in the area of local government.

  There was an early high rate of receipt of complaints in respect of alleged or suspected official misconduct in local government authorities. Certainly among smaller councils much evidence indicated that improper or inappropriate behaviour occurred. It was rare for councillors to declare their pecuniary interests, minutes were often not kept or kept in a less than satisfactory way, council records were commonly incomplete and contracts were let without calling tenders – some councils appear to have been run for the benefit of the Shire Chairman and the other Councillors. Prior to the establishment of the Commission the pecuniary interest provisions of the *Local Government Act 1936* had never been enforced.

  This situation has dramatically changed after 978 Commission investigations and reports such as the *Report into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of Gold Coast* (1991) and the *Complaints against Local Government Authorities – Six Case Studies* (1991). For the most part, pecuniary interests are now declared, minutes are kept, proper records are maintained and tenders are called. The Commission has received many unsolicited calls from Shire Clerks and other employees attesting to these changes.

  Recent Commission investigations such as the operations codenamed A, B, C and D have uncovered long-running corrupt schemes within various government departments involving hundreds of thousands of dollars worth of departmental property or funds. These investigations have resulted in substantial savings to the public revenue.

- **Operation A**

  Tradesmen working in a large Public Sector steel fabricating workshop had known for years that the workshop manager was misappropriating large amounts of property. They knew because they had been called in at weekends on paid overtime to build equipment for the manager's rural properties and they had seen truck loads of departmental property being driven out the gates at the manager's direction.

  The employees had not reported these cases to the police or the Department because they believed that the workshop manager's immediate supervisor must also have known about the rorts. One officer brought the matter to the attention of the Commission and as a result over $150,000 in property has been recovered and a brief detailing 50 charges of misappropriation has been referred for prosecution. The manager's supervisor has been transferred and the totally inadequate internal audit systems have been extensively remodelled.

- **Operation B**

  A senior officer in a Government Department, who obtained approximately $140,000 in corrupt payments from suppliers favoured in the placing of contracts in excess of one million dollars, pleaded guilty and was sentenced in the District Court to charges of official corruption on Thursday, 31 March 1994. He was sentenced to five years imprisonment, but in view of his co-operation with the Commission, his early plea of guilty, and his indication that he would give evidence against others involved in the matter, the sentencing Judge recommended that he be considered for parole after serving ten months.

  His three co-accused, all businessmen with no previous convictions, pleaded guilty by ex officio indictment in the District Court on 15 July, 1994. Their pleas of guilty followed the public servant's statement that he would give evidence against each of them. All received prison sentences (2½ years recommendation for parole after 6 months for two accused, 18 months recommendation for release after 3 months for the third). Their offences related to payments to the public servant in return for his awarding them the government contracts each time they tendered for them.

  A total of $154,000 was paid into consolidated revenue by way of proceeds of crime orders.

- **Operation C**

  In line with his responsibilities under the *Criminal Justice Act 1989*, the Director-General of the Department of Housing, Local Government and Planning has reported a matter concerning the alleged unlawful conduct of a Building Inspector at a major regional centre. It has been alleged that this person has been involved in corrupt activities with building contractors at that and other centres in the southern parts of the State.

- **Operation D**

  This is one of four current investigations into irregularities in the issuing of drivers licences and the registration of motor vehicles. The Commission received a complaint by the Department of Transport that an employee of the Department was suspected of issuing driver's licences in false names. Separate information was also received about the same time from an informant that it was possible to obtain a current Queensland driver's licence by payment of money to a former employee of the Department of Transport. It is expected that charges of official corruption will be brought against several persons.

  These investigations are a prime example of how the Commission's integrated approach to corruption and complex criminal activity is effective. Concurrently with investigating the corruption of the Department of Transport officers in conjunction with the Internal Audit Section of that Department, the Commission is inquiring into the use of these false licences by organised criminal groups throughout Australia.

  Information from criminal informants developed in the course of organised crime investigations has been combined with a report of possible misconduct made by a chief officer in line with his responsibilities under the *Criminal Justice Act 1989*, to generate a sophisticated investigation targeting corrupt public officials and their assistance to organised criminal groups. It is a poor response to treat official corruption in isolation from the criminal environment which generates it.

Although the Fitzgerald Inquiry did not investigate and report upon departmental corruption to the same extent as police and political corruption, the Commission is confident that its operations have led to a significant improvement in ethical behaviour and accountability throughout the public sector in Queensland. The response by chief officers in assessing and reporting suspected misconduct and the assistance given by

these departments to the ensuing investigations is testimony to their attitude to proper conduct by public officers.

THE ORGANISED OR MAJOR CRIME FUNCTION

THE COMMISSION'S APPROACH

The jurisdiction of the Commission to undertake the investigation of organised and major crime is limited in its scope by s. 23(f) of the *Criminal Justice Act 1989* to matters which, 'in the Commission's opinion are not appropriate to be discharged, or cannot effectively be discharged by the Police Service or other agencies of the State'.

'Organised crime' in the Commission's view means 'organised criminal activity' and connotes the co-ordinated activity of an orderly (not necessarily tightly) structured group.

'Major crime' arguably means something more than 'serious crime', an expression with which most people are familiar and which the legislature could have used had it intended to refer only to criminal activity which leads to the commission of criminal offences of a serious nature. 'Major crime' (as distinct from 'serious crime') means 'criminal activity which is unusually serious or significant'.

In s. 3, where the objects of the Act are stated, there is a clear statement of legislative intention that one of the purposes of the Commission is:

> to take measures to combat organised or major crime for an interim period.

The Act does not provide specific guidance as to the duration of that period or the test to be applied in determining when that period has concluded. However, s. 23(f) does provide some guidance and the Commission's view is that the test must be when, in the terms of s. 23(f) the QPS can 'effectively discharge such investigations'.

In seeking to fulfil its responsibilities in the light of this object the Commission has acted as far as possible in co-operation with the QPS with a view to developing that Service's level of skill and expertise in this area of investigation. The establishment of the Joint Organised Crime Task Force (JOCTF) referred to below is just one expression of this approach. Although the Act invests the Commission with jurisdiction to investigate organised and major crime for an interim period, there is much yet to be achieved before it could possibly be argued that the function is expended.

Early on, the Commission identified the need for an innovative approach to the organised crime problem mindful of Fitzgerald's observations (pp. 161-164). The Commission has had reason to put before the Committee on a number of occasions the outline of its understanding of the problem of organised criminal activity and the approach it has adopted to it. Although these matters have been addressed in some detail, for instance in Part II of the *Submission to the Parliamentary Criminal Justice Committee on the Use of the Commission's Powers under Section 3.1 of the Criminal Justice Act 1989* (April 1993), it is opportune in a report that may become public to restate the Commission's position on organised crime, which remains virtually unchanged from those previous reports and has been validated by the success the Commission has achieved in this area.

Australian Governments (Commonwealth and State) have received a succession of reports from Royal Commissions, Task Forces and like investigative bodies that have, with varying degrees of emphasis, warned of the development of organised crime in Australia. These reports paint a compelling picture of the development of organised crime and other forms of sophisticated crime in Australia – indeed, development to the point where existing methods of law enforcement find increasing difficulty in coping with these activities.

It is also increasingly accepted that any concerted attack upon sophisticated crime requires not only access to traditional police investigative techniques, but legal and financial support. If the struggle is to be successful then an appropriate balance needs to be struck whereby those investigating the criminal activity must have sources and facilities available to them which approximate those available to the alleged offenders. Organised crime reaps vast financial rewards which can be used to garner the best legal and financial brains. Although regrettable it is still an incontrovertible fact that the police are substantially disadvantaged in this area.

The QPS already has enormous demands placed upon it in attempting to satisfy the everyday needs of the community. There is a strong argument that the body which has the task of attacking organised crime must be free of other pressures upon its resources or calls upon its time. Organised crime is such a special problem that there needs to be a concentration and dedication of resources if inroads are to be made into it.

BEST PRACTICE

The Commission has endeavoured at all times not to be content with a comfortable corner in the landscape of law enforcement in Australia. The Commission was handed the challenge of doing things better and differently if necessary than the way

they had been done in the past. In establishing the investigative and intelligence processes at the Commission, we have sought to identify from national and international sources the best practice for investigation of complex organised and major crime. In setting up its investigative practices, the Commission has relied on the extensive experience of its founding senior officers and taken the best of what it found from the procedures of leading law enforcement agencies around the world. Best investigative practice is vital to mounting a successful response to the threat organised and major crime poses to Queensland.

As well as seeking out these practices, it has kept under review the success of its implementation of these practices. The review of the JOCTF strategies outlined below is one of these external reviews by international experts. In particular, the Commission's strategies and practices in the following areas have been shown though experience to be up with the best practice available:

- Integrated multi-disciplinary team processes
- Use of dedicated intelligence collection plans
- Use of specialist investigators (financial, legal, technical and culturally specific investigators)
- Intensive informant development
- Focus on the criminal enterprise
- Intensive use of covert techniques including surveillance
- Deliberate use of the Commission's special powers.

The Commission has been successful in making use of specialist investigative resources. It has sought to use techniques common to Australian law enforcement in a more effective way. Less common techniques have been applied according to best practice. Common techniques have been made more effective through being better integrated into the investigative process. Operational plans with substantial objectives detailing the functioning of various investigative techniques form the basis of all protracted Commission investigations.

Specialist investigative resources are integrated into ongoing investigations. It is not just that the Commission has these resources – for which it is sometimes enviously criticised. The way in which it uses these resources is highly regarded by other agencies.

- The Commission's specialist investigators are frequently invited to present papers in national and international law enforcement forums.

- The Commission has played an important role in working groups important to the development of criminal investigation techniques in areas like White Collar Crime and Proceeds of Crime.

- Commission investigators are invited to present specialist instruction at practical training of law enforcement officers in both QPS and other agencies.

- In joint operations it is often the Commission's specialist investigators who are most required by the agencies requesting the cooperation of the Commission.

Financial analysts working within the Commission have adopted a non-traditional, "hands-on" approach to their involvement in the investigative work of the Division, which runs counter to the traditional law enforcement approach.

The Commission's integration of accounting professionals into MDTs is consistent with outcomes of 20 years of development in the law enforcement response to organised crime and particularly the ravages of the drug trade. This level of integration is not typical of practices currently in place with other law enforcement agencies in Australia although it does coincide with avowed best practice in many forums attended by these agencies.

The integration of Intelligence Analysts into the MDTs has also broken a traditional boundary between intelligence and investigation. The Commission's more protracted investigations are able to draw on the analytical expertise of these analysts and the increasingly valuable data maintained in the Commission's intelligence database. This aspect is discussed further in Chapter 3.

EFFECTIVE ORGANISED CRIME INVESTIGATIONS

To the Commission's knowledge, a number of ethnically based and other organised crime groups are active in Queensland but have not previously been the subject of dedicated targeting on a continuing basis.

Overseas experience indicates that there is a long lead time in developing within law enforcement the expertise necessary to tackle organised crime groups. The basis steps are:

- collecting and analysing all information available in the law enforcement community

- establishing an intelligence collection plan which actively seeks to capture intelligence on current criminal activities and to identify the principals involved

- designing an operational plan for the proactive investigation of the organisation, in particular by surveillance (mobile and electronic); undercover penetration (by police agents – a very difficult task); the recruiting of informants; encouraging co-operation by peripherally involved persons; by the pursuit of the money trail by financial investigators, and the conduct of private hearings

- progressing from operation to operation, widening the net by targeting the organisation rather than individuals, gradually working to the top.

Although the whole endeavour can be simply stated, it is anything but simple in practice. It requires an understanding of the culture involved, including the language, the organisation, the attitudes, strengths and weaknesses of the principal players, infinite patience and a preparedness to commit resources for the long term. It is demanding of resources for no immediate return and therefore requires the understanding, support and commitment of the PCJC, the Parliament and the Government.

When the Federal Bureau of Investigation (FBI) decided to target organisations rather than individuals, it was concerned that the concomitant reduction in the "kill rate" would not be tolerated by its political masters. However the U.S. Congress accepted the change in direction as a necessary step, as a result of which the long term viability of the program was guaranteed.

The philosophy adopted by the Commission in fulfilling its statutory charter on organised crime has been:

- to undertake this function in co-operation with the QPS, or other major investigatory agencies

- to enhance the capacity of law enforcement generally to deal with the challenge of organised crime.

MULTI-AGENCY INVESTIGATIONS

The Commission's philosophy of acting wherever appropriate in combination with other law enforcement agencies, both local and interstate has been formalised in arrangements with the:

- QPS
- Australian Federal Police
- Victoria Police
- New South Wales Crime Commission
- Australian Securities Commission
- Australian Transaction Reports and Analysis Centre
- Australian Bureau of Criminal Intelligence
- Independent Commission Against Corruption
- Office of the Prosecuting Attorney, Honolulu, Hawaii

through the execution of Memoranda of Understanding (MOUs).

The typical MOU requires the participating parties to act in support of each other wherever possible, to share intelligence material and to provide for management of joint operations by the constitution of management and operational committees.

ESTABLISHMENT OF THE JOINT ORGANISED CRIME TASK FORCE (JOCTF)

After some preliminary discussions the Commission formally raised the formation of a JOCTF with the (then) Commissioner of the QPS on 11 December 1990. The proposal was confirmed in writing on 17 December 1990. The matter was raised again on 4 April 1991. Much to the Commission's regret, the QPS rejected the Commission's approach. The Commission pursued the idea again on 12 June 1991 and again on 12 September 1991. The Commission was left with no choice but to undertake its own investigation of organised crime groups by means of an in-house

task force composed of personnel from the Intelligence and Official Misconduct Divisions.

It was not until the current Commissioner of the QPS was appointed in November 1992 that the proposal to establish the JOCTF was finally implemented. The Task Force was formally established on 1 December 1992, two years after the original proposal.

The Commission has been in a position to commit the full time resources of only one team to this work, namely ten investigators, four intelligence analysts, two financial analysts, one lawyer and support staff with surveillance and technical unit support.

The starting point was the collection, collation and analysis of all available material, in particular that contained in the Information Bureau of the QPS. Frankly, in setting about this task the Commission was faced with a virtual desert. There was some collated material on Italian organised crime although little, if any, analysis of that material had been undertaken. There was virtually nothing in other areas.

The review of Information Bureau records required the scanning of hundreds of thousands of entries which had accumulated over five years. Thereafter the Commission set about the active collection of additional information pursuant to a collection plan agreed between the OMD and the Intelligence Division.

EXTERNAL REVIEW OF ORGANISED CRIME INVESTIGATION STRATEGIES

In undertaking this task the Commission was aware that it was adopting the practices and procedures which the FBI had successfully adopted two decades earlier in their fight against organised crime in the United States, in particular the American variant of the Mafia known as La Cosa Nostra. It seemed logical for the Commission to obtain the assistance of the FBI. Several requests to the (then) Director of the FBI, Judge Sessions, ultimately bore fruit when Judge Sessions nominated a former head of the FBI's Drug and Organised Crime Programs, Sean McWeeney, as a person who had the relevant expertise and experience to assist the Commission. Mr McWeeney arrived in May 1992 and audited the third phase of the Commission's organised crime program. After an intense review Mr McWeeney reported:

> My general conclusions are that the Criminal Justice Commission Organised Crime Investigative and Data Collection (Intelligence) Programs are very well directed and thought out. I am particularly impressed with your data collection plans and the awareness by the investigators that to be successful, the battle plans must be pro-

> active and geared for the long haul . . . I would encourage the Criminal Justice Commission to stick to the plans and not opt for the quick and easy 'score', unless same is part of the larger plan, to wit, the development of an informant to lead to more important Organised Crime figures.

These comments have been confirmed by the Commission's operational experience.

SIGNIFICANT RESULTS

The JOCTF has achieved significant results far earlier than anticipated. The following is a representative sample of its operations:

- **Operation Argosy**

  The Commission mounted an investigation into allegations by a drug dealer that two police officers were attempting to extort money from him. Subsequently two persons impersonating police officers were charged with extortion and drug and firearms offences. Both were convicted and sentenced to lengthy terms of imprisonment.

- **Operation Marlin**

  An operation into drug trafficking involving persons connected to an outlaw motorcycle gang (OMCG) in the Brisbane area. Operation lasted over three months resulting in the charging of four persons on drug related charges and another on weapons offences. Evidence also obtained concerning organised prostitution. All offenders convicted with one being sentenced to a term of imprisonment.

- **Operation F**

  The target of this operation is an employee of a Japanese company with significant interests in Queensland. It was alleged that he had trafficked in amphetamines in Hawaii and was closely associated with senior Yakuza figures.

- **Operation G**

  The target of this operation was a Yakuza member who frequently travels to Australia and owns a substantial residence on the Gold Coast.

- **Operation H**

  An ongoing operation concerning major amphetamine production and distribution by members of OMCGs. A senior member of one OMCG has been identified as a substantial trafficker. Extensive inquiries both here and interstate have established his connection to distribution networks in other States. Significant intelligence has also been disseminated to the QPS.

- **Operation I**

  An ongoing operation targeting the recruitment of Australian girls by Japanese organised criminal elements and their associates for 'hostessing' jobs in Japan, which allegedly involve prostitution.

- **Operation J**

  An ongoing operation in respect of suspected Asian criminals allegedly extorting money from Asian students in South-East Queensland. A second related operation centres upon the activities of an identity who came to the JOCTF's attention during 'J' and who is suspected of involvement in extortion, drug trafficking, prostitution and loan sharking.

- **Operation K**

  An ongoing operation into organised theft of Harley Davidson motorcycles by members of OMCGs.

- **Operation L**

  An ongoing operation concerning suspected organised crime links between the Yakuza and a person appointed to a sensitive government position.

- **Operation M**

  The Commission reviewed investigations undertaken by the QPS which successfully identified a number of drug crops and those involved in the management of those crops. Although highly successful, the QPS investigations snared "crop sitters" who are generally on the lower rung of organisations producing these illegal crops. Through intensive criminal analysis and financial investigation the Commission identified members of an OMCG and their associates who, it is alleged, were responsible for the drug cultivation and trafficking in the product. Three charges of cultivation of, and one charge of trafficking in, a dangerous drug have been levelled against a principal member of an OMCG and associated persons. Further charges in respect of tainted property resulting from a parallel proceeds of crime investigation have also been brought. The matter is awaiting trial.

- **Operation N**

  An ongoing investigation into alleged amphetamine trafficking by members of an OMCG.

- **Operation O**

  An ongoing investigation into alleged unlawful activities of members of the Department of Transport who are associates of an OMCG.

- **Operation P**

  An ongoing investigation into alleged amphetamine trafficking by members of an OMCG.

- **Operation Q**

  An ongoing operation into suspected drug trafficking by Asian criminals.

- **Operation R**

  An ongoing operation into alleged drug production and trafficking by Italian criminals.

- **Operation S**

  An ongoing operation concerning suspected drug production and trafficking by Italian criminals.

- **Operation T**

  An ongoing operation aimed at identifying some of the main participants in the organisation of illegal drug production throughout Australia, trafficking activity by members of OMCGs with interstate links and distribution by members of OMCGs in several States.

JOINT OPERATIONS WITH THE QPS AND THE AUSTRALIAN FEDERAL POLICE

In addition to the establishment of JOCTF, the Commission has conducted many operations into major and organised crime with the QPS, the Australian Federal Police (AFP) and the New South Wales Crime Commission (NSWCC). These operations were conducted in an attempt to bring principal criminals to justice. Some of the more significant operations are:

- **Operation Everest**

  Joint QPS and CJC operation over four months into the criminal activities of an Asian organised crime figure and persons associated with him in Brisbane involving the distribution of amphetamines and LSD. It resulted in the arrest and subsequent conviction of three persons on drug trafficking charges. Pecuniary penalty orders were made for $52,000. All offenders were sentenced to lengthy custodial sentences. The main target was a suspect of the Fitzgerald Inquiry but nothing could be proved at that time. He was sentenced to seven years imprisonment.

- **Operations Whitewash 1 and Whitewash 2**

  Joint AFP/CJC investigation into group of East Europeans trafficking heroin obtained interstate in the Brisbane, Logan and Gold Coast areas. Phase 1 from January to April 1992 resulted in the arrest of 11 persons, six on trafficking charges. Phase 2 from April to September 1992 resulted in charges against four persons. A total of 18 persons have been sentenced to substantial terms of imprisonment up to 20 years (non-parole) which is the heaviest sentence imposed for drug trafficking since the abolition of mandatory life sentences.

- **Operations Martini and Tiresome**

  Extensive CJC/QPS/NSWCC and NSW police operation relating to the trafficking of heroin in South-East Queensland involving the criminal activity of a group of Lebanese drug traffickers including heroin/cannabis, etc. Resulted in 40 persons being arrested on 208 charges. Substantial sentences were imposed as well as pecuniary penalty orders for $51,000 and $39,750.

- **Operation Chifley**

  A joint CJC and QPS investigation, lasting for over four months, targeted the organised criminal activity of former members of an OMCG. The operation resulted in charges against nine persons of whom eight were convicted of various offences in relation to drugs and firearms.

- **Operation Favour**

  Resulting from a request from NSW Police to assist in the location of a person wanted in relation to drug matters, this operation resulted in the conviction of one person on three charges including trafficking. The investigation was significant for the complicated money trail exposed by Commission financial investigators after investigations in three States. The Commission was able to show a link between the substantial amounts of cash dealt with by the accused and his alleged drug sales. This evidence was the major basis of the trafficking charges. The accused was subsequently ordered to pay to the Crown $865,000 pursuant to the *Crimes (Confiscation of Profits) Act 1989*. Amount recovered under this order to date is $360,000. The target who had absconded from New South Wales after stealing the 16 kg cannabis

exhibit from the Lismore Police Station was sentenced to five years imprisonment then returned to NSW and was sentenced to a further seven years imprisonment. He was described by the NSW sentencing judge as a major cannabis cultivator and distributor.

- **Operation U**

A joint operation into the alleged criminal activities of an OMCG. Conducted over six months period resulting in the arrest of five persons on a variety of charges including drug trafficking, possession and supply of drugs, and property charges (18 charges). Some matters are awaiting trial, however several persons have pleaded guilty to offences and one defendant, charged with trafficking and a variety of other drug related offences, was sentenced to 18 months imprisonment.

- **Operation Aztec**

An investigation into illegal gaming and money laundering in Queensland and interstate by convicted SP bookmaker Terrence Page and associates. This investigation resulted in the first serious conviction against Page. He pleaded guilty to the charges. This investigation was undertaken by the Commission after the QPS indicated they had information but were unable to effectively investigate the alleged offences. Officers from the QPS were attached to the CJC in a sophisticated investigation including extensive surveillance and financial investigations which resulted in the charging of four persons with eight offences relating to bookmaking activities and money laundering over a period of two years. A pecuniary penalty order of $2.7m was made against Page of which $300,000 has been recovered.

- **Operation Big Boy**

A joint operation of the QPS, AFP, the CJC and Australian Customs Service. The skill of the CJC surveillance group was critical to the success of the operation, which disclosed an attempted extortion and conspiracy to import a large amount of drugs into Australia. Thirty-three persons were charged with 98 offences. It netted 50 kg of marijuana, 600 gms of amphetamines, 400 gms of ecstasy and 1 kg of LSD. Convictions and substantial jail terms (e.g. seven years) were imposed on persons convicted of extortion and drug trafficking.

- **Operation Oxford**

  This investigation targeted car stealing in Brisbane, the Gold Coast and New South Wales. In all 42 persons were charged with 104 offences.

- **Operation Northpole**

  Joint operation with QPS in North Queensland targeting a drug dealer and prostitution organiser said to be protected by police. The CJC found that one officer had been supplying information to the criminal which could have jeopardised an undercover police operation. The criminal was charged with supplying drugs and later convicted while the police officer was charged with passing confidential information and other disciplinary offences and subsequently demoted.

- **Operation V**

  This is an investigation into the alleged criminal activities of a notorious central Queensland based criminal for alleged trafficking in drugs and associated police corruption. On 16 September 1993 the target of this operation was arrested and charged with several offences including trafficking and production of cannabis and the possession and supply of heroin.

  Specialist financial investigators from the Commission with local police documented previous drug production and trafficking. Combined with detailed financial analysis this information will be used for a potential pecuniary penalty order of more than $700,000 (being the assessed benefit from the sale of this crop). Based on conventional techniques this strategy would not have been possible.

- **Operation Tunnel**

  Investigation into drug trafficking in Sydney and the Sunshine Coast. Joint operation with the NSW Drug Enforcement Agency into a major group of heroin traffickers resulted in 22 charges against seven persons involved in the trafficking and supply of heroin.

- **Operation W**

  Joint operation between QPS and JOCTF into large scale drug cultivation and suspected murder by members of an outlaw motorcycle gang and associates. The operation was conducted over three months resulting in the arrest of five persons on charges of murder, accessory after the fact of murder, and cultivation. Further charges are being considered by the Director of Prosecutions (conspiracy/perjury etc.). Investigations into the confiscation of the proceeds of crime are continuing.

- **Operation X**

  During the course of operation W, information was received concerning a possible murder and the person responsible for this crime. That information was passed to QPS Homicide Squad which subsequently sought the JOCTF's assistance in the investigation. This operation resulted in the arrest of several people, one for murder. The offence was allegedly committed in mid-1989.

- **Operation Y**

  This operation resulted from the proactive organised crime investigation strategy outlined above. As a result of intensive intelligence analysis, informant development, extensive use of covert techniques and financial analysis, the task force identified a sophisticated and substantial drug cultivation on a remote property. The persons alleged to be responsible were resident throughout Queensland and New South Wales. The Commission's specialist Italian speaking investigator played an important role in giving the task force daily access to information in languages other than English and in managing informants with strongly Italian cultural backgrounds. Links were established to a major Italian organised crime group with criminal influence throughout Australia. Nine people were charged with a total of 18 offences under the *Drugs Misuse Act 1986*; eight of these persons have been committed for trial. The operation, which extended over eight months was conducted jointly with the QPS and the Brisbane NCA with assistance from the Sydney NCA and the AFP.

- **Operation Z**

  Extensive and sophisticated drug cultivation in western Queensland and distribution interstate. JOCTF operated jointly with the NCA and interstate agencies. The investigation lasted ten months and resulted in the charging of twelve persons in Queensland and interstate with 42 offences. The matter is awaiting committal and trial.

- **Operation Grease**

  Together with the West Australian Police and the NCA Adelaide the JOCTF located Bruno Romeo (The Fox) who had been wanted for two years in respect of two major drug cultivations found in Western Australia. The operation, which lasted one month, led to his location and arrest on a drug cultivation in Lismore. He was extradited to Western Australia where he was recently sentenced to 10 years imprisonment. The Crown alleged that he was the prime mover and principal of an organised crime group which the court found extended throughout Australia.

- **Operation Tiny**

  An ongoing joint operation between QPS and the JOCTF targeting members of an OMCG for a variety of offences including breaking and entering, armed robbery, stealing and drugs.

- **Operation AA**

  An ongoing joint operation between QPS/JOCTF/NSWCC into suspected laundering of monies derived from criminal activity overseas, by Australians with organised crime connections. It is also suspected that those under investigation have corrupted others in order to facilitate their money laundering scheme and further have links to organised prostitution.

PUBLIC INQUIRIES

In reporting upon the conduct of his Inquiry, Fitzgerald recognised that:

> Certain allegations had been made which are not and cannot be dealt with by ordinary processes and institutions and which have caused great public concern. Such allegations have to be investigated so that the community can be satisfied that the suspected problem either does not exist or has been exposed and eradicated. Therefore, when a Commission Inquiry is set up, the restoration of public confidence in the integrity of vital elements of public life is the paramount public interest to which other public interests must be accommodated. (p. 10).

Fitzgerald concluded that the Commission would need to be able to conduct public hearings and hearings for investigative purposes. In respect of public hearings, he recommended:

> the CJC be able to conduct public hearings on matters of general significance with respect to the administration of criminal justice. (p. 376)

The Commission has conducted seven public inquiries over the four years of its operation where it believed that matters which had been referred to it required such ventilation. Three other inquiries are still current, two of which are due to report shortly. Such inquiries have many of the indicia of Royal Commissions. In recent times most have been chaired by former judges of the Supreme Court.

The holding of a public inquiry is a powerful means of informing the public and creating the atmosphere for change. The Commission recognised, at an early date, that strict procedures would need to be drafted and promulgated to avoid, as far as possible, damage to the reputations and standing of persons concerned in the conduct of such hearings. This has been done through non-publication orders and ensuring the anonymity of witnesses; early unsatisfactory experiences have not been repeated.

Details on these inquiries including their major findings and recommendations are provided in Appendix D.

In addition the Commission has publicly reported to Parliament on six other investigations under the provisions of s. 26 of the *Criminal Justice Act 1989* where it believed that the public interest required that it do so. A summary of those reports, including their major findings and recommendations, is provided in Appendix E.

PROCEEDS OF CRIME

Fitzgerald reported:

> The purpose and motivation for organised crime are huge profits. Those profits are used to corrupt officials and buy skilled services from expert lawyers, accountants, financial and other advisers. The money also buys sophisticated technology and the services of criminal subordinates and agents. (p. 162)

As Fitzgerald recognised, much of the power and the ability of organised crime to corrupt police and public officials stems from the money generated from such activities. Further, stripping illegal gains from convicted criminals is, in some cases, a more powerful deterrent than imprisonment. The Commission has instigated action which has resulted in the forfeiture of 13 houses owned by criminals convicted of drug offences.

USING ASSET FORFEITURE LEGISLATION EFFECTIVELY

The Commission's Proceeds of Crime Unit has been aggressive in attempting to take full advantage of the Queensland legislation within the clear policy objective of attacking major and organised crime. It has found that important aspects of the legislation have been left untried in the courts because of a reluctance to make applications for forfeiture and penalty orders in complex cases. With the cooperation of the State Director of Prosecution's office (Queensland) a number of these cases have now been brought and significant points of law have now been tested.

One major reason for the legislation not being used is the level of resources required to mount and maintain successful actions. Significant resources are required to conduct financial investigations and to maintain support for continuing litigation. Asset forfeiture actions are civil actions which often provoke a spirited and sophisticated defence financed through the very ill gotten gains that are the subject of the application for forfeiture.

Organised crime kingpins do not like having their assets attacked. There are well documented cases of major criminal figures in Australia and overseas pleading guilty in respect of principal criminal charges even with the prospect of lengthy jail sentences and fighting protracted and costly legal battles to maintain control over their assets to avoid having them confiscated by the courts. Bruce Cornwell pleaded guilty to drug importation and accepted a 23 year jail sentence but appealed every stage of the proceedings to confiscate some $7 million in the profits of his crime.

The strategic decision taken by the Commission to have its Proceeds of Crime Unit focussed on the entire investigation life cycle has greatly increased the effectiveness with which confiscation actions are pursued in the courts; particularly in the timely service of restraining orders.

The Commission's Proceeds of Crime Unit has been operating since September 1990. In that time, the unit's activities have resulted in almost $844,000 being paid into Consolidated Revenue.

It has also been involved in contested matters in which the courts have released a further approximately $611,000 of restrained funds for 'reasonable legal expenses' to the persons defending the charges laid by this Commission.

Accordingly, in four years, this unit has been involved in 'proceeds of crime' matters in which over $1.455 million of unlawfully obtained assets has been taken from criminals.

TABLE 2.11: NET VALUES OF RESTRAINED AND FORFEITED ASSETS

Total Net Value of Currently Restrained Assets	$ 1,540,000	
Recent Forfeitures	$ 130,000	(Operation Dingo - corruption)
	$ 11,000	(Operation Virgin - drugs)
	$ 11,000	(Operation Whitewash - drugs)
Motor Vehicle	$ 5,000	(Operation Whitewash - drugs)
	$ 157,000	
Total of Forfeited/Pecuniary Penalty Order Assets: (Since September 1990)	$ 288,000	(Operation Favour - drugs)
	$ 355,000	(Operation Aztec - SP Bookmaking)
	$ 60,000	(Operation Whitewash - drugs)
	$ 130,000	(Operation Dingo - corruption)
	$ 11,000	(Operation Virgin - drugs)
	$ 844,000	

Total of Restrained Assets Expended in Legal Expenses: (Since September 1990)	$ 321,000	(Operation Aztec - SP Bookmaking)
	$ 200,000	(Operation Whitewash - drugs)
	$ 70,000	(Operation Whitewash - drugs)
	$ 10,000	(Operation Fantail - drugs)
	$ 10,000	(Operation Bandicoot - drugs)
	$ 611,000	

Total of Assets Removed from Criminals by CJC Operations: (Since September 1990)	**$ 844,000**	(Forfeited/Pecuniary Penalty Order)
	$ 611,000	(Legal Expenses)
	$ 1,455,000	

In Operation Aztec, the Commission brought the first money laundering charges in Australia. Further, by stripping Terrence Page of his assets, it destroyed a multi-million dollar SP operation operating in various Australian States and overseas.

THE MAJOR CRIME FUNCTION

Under this jurisdiction the Commission has undertaken the investigation of a handful of major criminal cases referred to it by the QPS over the past 12 months, all relating to alleged murders or attempted murders. In undertaking these investigations, the Commission has either exercised its power to summon and examine unco-operative witnesses on oath or planted listening devices pursuant to warrants granted by the Supreme Court. When such applications are received by the Commission from the QPS, having been strictly vetted by the Assistant Commissioner, State Crime Operations Command, QPS, and the Deputy Commissioner, Operations, before forwarding to the Commission, they are closely scrutinised by a senior member of the legal staff of the Commission to see that the criteria referred to above are satisfied before referring to the Chairperson for his consideration and certification under s. 23(f).

The five matters all related to serious offences where QPS's investigations had been frustrated. The matters involved allegations of the following serious offences:

- A drug related murder – Operation A

- A drug related arson/murder – Operation C
- A drug related double murder – Operation D
- A drug dealer murder – Operation E.

It is worth noting that the use of the Commission's compulsory powers is not to be seen as a panacea. Some of the cases referred to the Commission remain unresolved regardless of the use of those powers.

LESSONS LEARNED FROM THE FITZGERALD REPORT

The Fitzgerald Report has gained a reputation akin to the inviolability of Holy Writ in some sections of the community, such that to attempt to gainsay any proposition put forward within the report is treated as something akin to heresy. This position is not helped by the terms of the legislation which for instance requires the OMD to act in accord with the recommendations of the report so far as it is practicable. This creates an environment which greatly restricts the Commission's ability to modify its procedures based upon the experience gained in discharging its statutory functions for over four years and, in the case of the OMD, the finalisation of approximately 9,000 investigations. Further, it is a position which was never sought by Fitzgerald. For instance, he said at page 313:

> This report cannot prescribe what the appropriate balance and size of establishment [of the OMD] should be. In part that will have to be the product of experience in operations.

The two main ways in which the OMD has modified its adherence to the strict Fitzgerald model in the light of experience are:

- the issuing of guidelines which have modified the reporting of official misconduct by some departments
- the extent to which matters have been referred to the QPS for investigation.

THE ISSUING OF GUIDELINES

The *Criminal Justice Act 1989* by s. 37(5) authorises the Commission to issue guidelines which regulate or modify a principal officer's duty to report suspected official misconduct to the Commission.

In recognition of the special needs and difficulties faced by teachers the Commission has issued guidelines which excuse the Director-General of the Department of Education from immediately referring complaints of minor assaults on students in circumstances where there is no basis to suspect an ongoing problem exists provided that monthly the Department provide the Commission with a schedule explaining how complaints which could amount to official misconduct have been dealt with by the Department.

The Commission retains the power to seek further information about any complaint dealt with directly by the Department and can at any stage cause the investigation of a matter to be taken over by its investigators or the Police Service.

Negotiations are presently under way to provide similar relief to the Department of Family Services and Aboriginal and Islander Affairs and the University of Queensland.

THE REFERRAL OF MATTERS TO THE QPS

Fitzgerald envisaged (p. 315) that only minor or purely disciplinary matters would be referred to the Chief Executives of Departments or the Commissioner of Police to investigate and take appropriate action. With complaints running at nearly 4000 per annum, which is four times the number dealt with by the Internal Investigations Section of the QPS in its last year of operation (1989), the Commission does not have the staff or resources to investigate all matters of misconduct referred to it. Thus it asked for, and was eventually granted, an amendment to its legislation, which took effect on 13 May 1992 giving the Commission a discretion whether to investigate a matter or to decide the extent of that investigation. Thereafter the Commission set and published criteria for the exercise of this discretion (see Appendix F). Currently the Commission refers approximately 21% of all complaints of misconduct against police to the QPS for investigation on its behalf. The QPS's decision is then referred to and reviewed by the Commission prior to the matter being finalised.

ISSUES

The Commission desires to take this opportunity to bring to the Committee's attention important matters which have arisen during the discharge by the Commission of its statutory functions. In each case, in the Commission's view, these issues impact importantly on its operations. The Commission desires to brief the Committee on these matters with a view to seeking the Committee's intervention or support, for example, to bring about legislative change or to alter existing arrangements.

JURISDICTION TO INVESTIGATE ELECTED OFFICIALS

The definitions 'unit of public administration' and 'official misconduct' in the *Criminal Justice Act* make it clear that it is intended the Commission should have jurisdiction to investigate certain alleged misconduct on the part of members of the Legislative Assembly and members of Cabinet. Furthermore, the Commission's investigative jurisdiction extends to elected members of local authorities.

Generally, the Commission's jurisdiction to investigate official misconduct on the part of a public officer is limited by s. 32(1)(d) and (e) of the Act to conduct which constitutes or could constitute:

- a criminal offence; or

- a disciplinary breach that provides reasonable grounds for termination of the person's services in the relevant unit of public administration.

However, it is uncertain whether the Commission has jurisdiction to investigate the conduct of an elected official where the conduct does not constitute a criminal offence. The uncertainty arises because in the case of elected members of local authorities and members of the Legislative Assembly, no code of discipline exists prescribing standards of conduct. The Commission therefore obtained the opinion of Senior Counsel who advised as follows:

- The reference to 'disciplinary breach' in the definition of 'official misconduct' means a disciplinary breach that actually provides reasonable grounds for termination, which necessarily involves reference to an identifiable standard of conduct required of the person in question and reference to a regime which provides for dismissal in the event that the requisite standards are not observed.

- The Minister's Code of Ethics does not supply the requisite disciplinary regime as it does not constitute an objective standard of legally binding rules governing conduct in office and does not provide a mechanism for dismissal by reference to failure to adhere to prescribed standards of conduct. Furthermore, the standing rules and orders of the Legislative Assembly, the *Constitution Act 1867* or the *Legislative Assembly Act 1867* do not provide the necessary regime as they do not contain any provision for removal from office of a Member of the Legislative Assembly.

- In respect of elected members of local authorities, the *Local Government Act* does not deal with the question of dismissal from office and there are no separately prescribed standards of conduct.

- As no code of discipline providing for dismissal is prescribed in relation to either Members of the Legislative Assembly or elected members of local authorities, there can arise no occasion for the termination of a member's services for a 'disciplinary breach' within the meaning of the definition of 'official misconduct'.

- Therefore, if a member is suspected of having breached an ethical standard, or engaged in other improper conduct, that does not constitute a criminal offence, the Commission does not have jurisdiction to investigate that conduct.

- The definition of 'official misconduct' in the *Criminal Justice Act 1989* is to be contrasted with the definition of 'corrupt conduct' in the *Independent Commission Against Corruption Act 1988* (the ICAC Act). In the ICAC Act, the ICAC is empowered to investigate corrupt conduct if the conduct constitutes or involves:

  (a) a criminal offence; or
  (b) a disciplinary offence; or
  (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official.

  The *Criminal Justice Act 1989* definition of 'official misconduct' departs from the ICAC Act definition of 'corrupt conduct' in that the commission of a disciplinary offence is not of itself sufficient to attract this Commission's jurisdiction. Secondly, the existence of reasonable grounds for dismissing an official is not itself sufficient ground to attract the Commission's jurisdiction. The definition requires additional elements such as conduct that:

  - is not honest or impartial;
  - involves the misuse of information; or
  - involves a breach of trust.

- The decision in *Greiner v ICAC* (1992) 28 NSWLR 125 is consistent with the interpretation Senior Counsel gave to the definition of 'official misconduct' in that it was there held that in determining whether corrupt conduct meets the

criterion set out in paragraph (c) above, is it necessary to apply objective standards established and recognised by law.

The Commission has accepted Counsel's advice that the conduct of elected officials will only attract the Commission's jurisdiction if the alleged conduct constitutes or could constitute a criminal offence. Therefore, there will be cases involving conduct constituting an abuse or misuse of the powers of office which will not be subject to investigation by the Commission as the conduct falls short of criminal conduct. The Commission has given careful consideration to whether it should have jurisdiction to investigate such cases and has formed the following view:

- In the case of elected members of local authorities, as no regime exists for regulating the conduct of members, the *Criminal Justice Act 1989* should be amended to extend the Commission's jurisdiction to investigate such conduct.

- On the other hand, Members of the Legislative Assembly are liable to expulsion from Parliament in certain cases. Although most of the cases have involved criminal conduct, there have been some cases where Members have been expelled for lesser conduct. Therefore, the Commission believes that such cases should be left to Parliament itself to regulate and that the Commission should only investigate where the alleged conduct involves or may involve criminal conduct.

UNDERCOVER OPERATIONS

In the report of the Commission of Inquiry into Operation Trident published in March 1993 the Honourable W Carter QC acknowledged the importance of covert operations as a tool for investigators in circumstances where conventional methods had failed or could not be applied in the detection of crime. He recognised that the circumstances requiring covert operations will become more and more frequent as criminals and criminal groups become better organised and utilise new technology.

Commissioner Carter considered the extent to which legislative control of covert operations was necessary. After considerable deliberation, he was persuaded to the view that total legislative control was unnecessary and undesirable. He referred specifically to procedural matters such as the assessment of information which may enable a covert operation to proceed and the subsequent methodology applied as being best left to a flexible regime, the accountability and responsibility of which is vested in the Commissioner of Police or the Chairperson of the Criminal Justice Commission.

On the other hand, Commissioner Carter was strongly of the view that there should be a legislative framework to establish clear authority to undertake covert operations and to provide protection for covert operatives carrying out activities in compliance with specified conditions.

The Commission adopts completely these conclusions reached by Commissioner Carter. It also agrees with the recommendations made by him and, in particular, the following significant ones:

1. That the Chairperson of the Criminal Justice Commission be given clear legislative authority to:

    a. Apply specific terms, conditions or limitations to particular covert operations; and

    b. Permit or prohibit specific activities in which a covert operative may participate. Where there was a reasonably foreseeable consequence that a person would be injured then, of course, no approval could be given to conduct that specific activity.

2. That the Chairperson be given authority to appoint in writing any police officer to perform duty as a covert operative.

3. That the Chairperson be given authority to define, in writing, the limits within which activities may be undertaken by persons who are utilised as covert operatives.

4. That there be specific legislative provision allowing for the exoneration of a covert operative who has committed a criminal offence where that operative can show that his/her actions were reasonable in all of the circumstances of the case and to provide that that person was neither a principal offender nor an accomplice.

5. That there be a statutory provision allowing for a covert operative and covert controller acting with the authority of the Chairperson to assume an identity other than his or her own and be in possession of any document relating to that assumed identity. This should extend to false registrations in relation to motor vehicles used in the covert operation.

The Commission is involved in ongoing discussions with the QPS to prepare a draft Cabinet submission for Cabinet's consideration of legislation incorporating these recommendations. In the Commission's view, this legislation is of paramount

importance for the protection of covert operatives and the maintenance of the integrity of covert operations.

THE *CRIMINAL JUSTICE ACT 1989* PROVISIONS FOR THE PROTECTION OF WHISTLEBLOWERS

Prior to and during July 1993 the Commission was involved in investigating several allegations of misconduct against councillors of the Whitsunday Shire Council. Information in relation to the various allegations being investigated was provided to the Commission on several occasions prior to July 1993 by the Shire Clerk.

On 12 July 1993 the Whitsunday Shire Council purported to dismiss the Shire Clerk without prior notice. At a meeting on that date, the Clerk was given a letter stating that she was being dismissed because of 'the breakdown of an effective and productive relationship' between her and the Council.

The Commission immediately began an investigation pursuant to its responsibilities under ss. 103, 104 and 131 of the Act to protect persons who are victimised because they have provided assistance or information to the Commission. As a result of information obtained, the Commission was satisfied that the Shire Clerk was entitled to the protection of the 'whistleblower' provisions of the Act. As a result, a meeting was arranged with the responsible Minister, who subsequently arranged for the Governor-in-Council to rescind the Council's resolution dismissing the Clerk. The Clerk returned to work with the Shire Council on 16 July 1993 and has continued to work in her position until the present time.

On 11 November 1993 the Commission filed a notice of motion in the Supreme Court of Mackay seeking an interim injunction to protect the Whitsunday Shire Clerk's position. This was the first injunction application ever brought by the Commission under the whistleblower provisions of the Act.

On 11 November 1993 His Honour Mr Justice Demack granted the Commission's application for an interim injunction to restrain the Council from taking any action to dismiss the Shire Clerk pending the trial of the action.

On 8 February 1994 Counsel instructed by the Commission appeared at the Supreme Court at Mackay on the trial of the Commission's application for a permanent injunction to protect the Shire Clerk's position. At that time, Counsel for the Whitsunday Shire Council made an application, without prior notice to the Commission, for the proceedings, which had until that time been heard in Chambers,

to be adjourned into open court. The Council's application was made under s. 15 of the *Supreme Court Act 1892*, which relevantly provides:

> when, upon an opposed application coming on to be heard before a judge in Chambers, either party appears by counsel or solicitor, the matter shall be adjourned into court . . . and shall be heard in open court, unless all parties consent to its being heard in Chambers.

This contrasts with s. 119 of the *Criminal Justice Act 1989* which relevantly provides:

> an order of a judge of the Supreme Court in the nature of an injunction . . . shall be made in accordance with the rules of the court, or in so far as those rules do not provide, as directed by a Judge of the Supreme Court, *and shall be heard in Chambers.* [emphasis added]

Demack J ruled in relation to this point that there was no inconsistency in the terms of the Acts, and that they could be read together, and that in the circumstances the respondents had a right to apply for the matter to be adjourned to and heard in open court pursuant to s. 15 of the *Supreme Court Act 1892.*

Counsel for the respondent Council also made a submission to the trial judge that s. 104 of the *Criminal Justice Act 1989* was void in so far as it purported to apply to the dismissal of the Shire Clerk, as the Shire Clerk was employed under a Federal Award, namely the Local Government Officers Award, and s. 104 was inconsistent with the procedure for and rights of dismissal given to the Council with respect to employees under that Award.

Demack J also ruled in favour of the respondent Council on this point, holding that the whistleblower provisions of the *Criminal Justice Act 1989* would, in effect, be invalid when it came to protecting the position of a person who was employed under a Federal Award.

The Commission has appealed to the Court of Appeal against both of these rulings. It considers that both rulings are wrong in law. If this is correct, the Commission's ability to protect whistleblowers in this State is seriously undermined.

If the trial judge is correct on the first point, it would mean that any respondent to a Commission application, which according to the *Criminal Justice Act 1989* shall be heard in Chambers, could apply at any time to have the proceedings removed to open Court. In the Commission's view, the fact that proceedings in respect of their dismissal or victimisation would be heard in open court would intimidate many prospective whistleblowers and discourage them from providing information to the Commission. This view was borne out by the Commission's experience in the

Whitsunday Shire Council matter, which saw many alleged aspects of the Shire Clerk's personal life being canvassed in affidavits filed on behalf of the respondent Council.

In relation to the second ground of appeal, the effect of Demack J's ruling is that any whistleblower in the State of Queensland who happens to be employed under a Federal award would not be entitled to the protection of the whistleblower provisions of the Act. Demack J's ruling effectively excludes from the protection of these provisions all clerical and managerial staff of local authorities who are employed under the Local Government Officers Award. Again, in the Commission's view, the fact that they were not so protected would intimidate many prospective whistleblowers and discourage them from providing information to the Commission.

The appeal in respect of the judge's ruling in relation to both of these matters was heard at the Court of Appeal at Brisbane on 15 July 1994[2].

The Honourable the Attorney-General, intervened in respect of both matters of appeal, and supported the Commission's argument in respect of both matters that the Honourable trial judge erred in his findings.

The Court's decision has been reserved.

The Commission understands that ss. 104 and 131 of the Act may be repealed and replaced by other provisions in proposed legislation to comprehensively deal with whistleblowers' protection in Queensland. The Commission has not yet had time to consider these proposals at the time of preparation of this submission. However, if ss. 104 and 131 are not repealed, and notwithstanding the outcome of the litigation, the Commission recommends that the matter be placed beyond all doubt by appropriate amendment to the Act which clearly makes s. 15 of the *Supreme Court Act 1892* subject to s. 119(1) of the Act. In any event, this should be done in any future whistleblower's protection legislation. These issues are also considered in Chapter 11 concerning the amendment of the Act.

MYTHS AND MISCONCEPTIONS

Any organisation with the role and functions of the Division is bound to be involved in controversy. The Division has met, and probably exceeded, expectations in this regard. If the Commission were not followed by debate and controversy, its critics

[2] The judgement of the court was delivered on 28 July 1994 after the body of the submission had been prepared. The judgement and its effect are analysed in Appendix K.

could argue that it was not achieving its purpose. The Commission is pre-eminently an instrument of change – change to attitudes and cultures within the QPS and the wider public sector. A comfortable Commission would have been an ineffective Commission.

However, certain controversies have arisen which are not of the Commission's making and which are based upon ignorance, misconception, rumour or prejudice. The Commission believes that in a submission of this kind such fallacies should be laid to rest. It has sought to identify the major fallacies and to deal with them in turn.

THE COMMISSION INHIBITS POLICE IN THE PERFORMANCE OF THEIR DUTIES

This myth has taken various forms over the four years of the Commission's existence, but, in its crudest form, it alleges that police can no longer take necessary action because of the fear of being reported to, and investigated by, the Commission.

This allegation is not restricted to the QPS and in recent months has been uttered by some teachers' representatives. It can be summarily rejected in respect of teachers, by simply referring to the facts – out of 275 complaints against teachers referred to the Commission, only five have been investigated by the Commission. In respect of the QPS fear rather than fact may weigh on the minds of some police officers, although the allegation has been less frequently raised in the last 12 months as the processes of investigation by the Commission became more widely understood.

It is not alleged that the Commission actually interferes in police operations or prevents police from getting on with their work in the requirements it makes when discharging its responsibilities. Rather it is claimed that the fear of a Commission investigation should a citizen make a complaint deters police from taking action that they would otherwise take.

Clearly if this fear prevents police from engaging in misconduct, the Commission is doing what it was set up to do.

If on the other hand police are discouraged from taking appropriate action because of concerns about complaints being made against them, the accountability system is having a negative impact on law enforcement and this would be of concern to the Commission.

In the Commission's view there is no basis for concern that criminal or disciplinary action will be taken against police officers as a result of a CJC investigation if the

subject officer has done nothing wrong. Those who express concern about the Commission's activities cannot point to any case in which a police officer has been wrongly convicted of a criminal offence or unjustifiably had a disciplinary sanction imposed as a result of a CJC investigation.

Obviously, however, officers are sometimes the subject of investigations when they have done nothing wrong; the Commission accepts that this is stressful for the officers concerned and could act as a disincentive to their taking appropriate action in the future.

The Commission has taken a number of initiatives to address this problem.

- **Initial Assessment**

All complaints upon receipt are referred to the Assessment Unit of the Complaints Sections to enable preliminary inquiries to be undertaken to help identify matters which do not warrant further investigation. During this process a significant proportion of complaints are finalised without a full scale investigation being conducted and without the subject officer being required to provide an account or explanation of his or her actions.

- **Expert Review**

Before a complaint is detailed for investigation the material collected by the Assessment Unit is considered by a senior Legal Officer and a Detective Inspector of police. Only if they consider the matter warrants further investigation and they persuade the Chief Officer of the Complaints Section that this is appropriate will the matter proceed to a full investigation.

The Commission has now processed in excess of 12,000 complaints and it has obviously therefore acquired a high degree of expertise in identifying matters which reasonably raise a suspicion of misconduct. The number of complaints received continues to increase and the Commission has no desire or capacity to undertake investigation into matters not warranting such examination.

- **Informal Resolution**

At the instigation of the Commission, in conjunction with the QPS, a system of informal resolution of complaints has been designed and implemented. This allows

complaints to be more speedily resolved without fault or blame being attributed to either party. It assists officers to change their conduct where necessary without placing them in jeopardy of having a sanction imposed.

- **Addresses and Presentations**

Staff from the Complaints Section frequently address groups of police officers at the Police Academy, at universities, at the Chelmer Police College and at the Commission on the role and function of the CJC with particular emphasis on the handling of complaints against police. Last year 14 such addresses were given. This helps police understand the process and leads them to accept that if they have done nothing wrong they have nothing to fear from a CJC investigation.

- **False Complaints**

The Commission has always had a policy of causing people who wilfully make false complaints against police to be prosecuted. However, the provisions of the *Police Service Administration Act 1990* and the *Vagrants Gaming and other Offences Act 1931* which create the offence are very onerous for the prosecution to satisfy. For this reason the Commission successfully sought an amendment to the *Criminal Justice Act 1989* to create an offence of wilfully making a false complaint to the Commission. So far more than a dozen such prosecutions have been initiated.

The Commission considers the concerns held by some police about the Commission's investigations are largely unfounded and as a result of the initiatives referred to above they are not widespread. It may be that a small number of officers who are for various reasons disinclined to actively enforce the law will continue to use the Commission as an excuse for not doing their job. However, the Commission considers that the majority of police now accept civilian oversight of complaints as an integral part of the accountability system and realise that unjustified complaints are part of a policeman's lot which should not discourage them from taking whatever appropriate action a situation requires. In any event, what is the alternative? Because of largely irrational fears, is it suggested that police misconduct should not be investigated? Clearly, this is an unsustainable proposition.

THE COMMISSION IS A STAR CHAMBER

The Commission's private investigative hearing proceedings have been described at times by detractors as a Star Chamber.

Historically, this was a court of civil and criminal jurisdiction, primarily concerned with offences of crown interest and noted for its summary and arbitrary procedures. Today the term carries the pejorative connotation of an arbitrary and oppressive tribunal.

The criticism ignores the fact that, on a number of occasions, the Commission's private investigative hearing procedures have been the subject of litigation in the Supreme Court and the Court of Appeal and, on each occasion, the procedures that have been adopted by the Commission have not been found to be unfair – the applications challenging those procedures have been dismissed.

The first point to note, in relation to the Commission's procedures, is that each and every person who is required to attend before a private investigative hearing is served with a summons which contains particulars of the subject matter of the investigation. They contain sufficient information to apprise the prospective witnesses of the nature of the investigation being undertaken to enable them to seek legal advice and prepare for their examination.

As a further protection to the rights of the witness, where the witness attends without a legal representative, that witness is advised that he or she is entitled to have a legal representative present if he or she wishes. If the witness indicates that he or she wishes this, then the proceedings are invariably adjourned to enable the witness to obtain legal representation and to give adequate instructions. If, at any time during the hearing, a person, who has previously indicated that he or she did not wish to have a legal representative present, changes his or her mind, then the hearing will invariably be adjourned to accommodate that change of mind.

In each instance, whether the witness is represented or not, the Commission ensures that he or she is apprised of his or her rights and obligations under the Act. In particular, the Commission will satisfy itself that the provisions of s. 96 of the Act have been brought to the attention of each witness. By virtue of that section, a statement of information furnished by a person to the Commission, or a disclosure made by a witness before the Commission, after that person or witness has objected to furnishing the statement or making the disclosure on the ground that it would tend to incriminate, is not admissible in evidence against that person or witness in subsequent civil, criminal or disciplinary proceedings, except in relation to proceedings for a contempt of the Commission or an offence of perjury. That is, although the right to silence is removed, where the objection is appropriately taken, the answers given by witnesses can only be used against them for perjury or contempt of the Commission.

Central to the concept of private hearings is the power of the Commission to prohibit publication of evidence and to exclude persons from attending at the hearing. The use of these powers protects the reputation of both the witnesses and those persons who are the subject of the investigation. In fact, in many instances, to hold public hearings in the same investigation would unquestionably result in great damage to the reputation and livelihood of those who are the subject of the investigation and possibly to the witnesses.

The Commission has adopted a further safeguard. Where the Commission has made a preliminary decision to make a report to the Director of Prosecutions, the Commissioner of Police or other person pursuant to the provisions of s. 33(2) of the Act, the Commission provides to the person who is the subject of the investigation the substance of the adverse information received during the investigation and invites him or her to make any submissions or comments which he or she may wish to make in relation to the matter. Any submissions or comments received are considered prior to a final decision being made.

THE COMMISSION'S HEARINGS ARE UNDULY SECRETIVE

A related criticism alleges that the Commission is obsessed with secrecy, the evidence for which is said to be its predilection to holding closed hearings.

Since the inception of the Commission, there have been 150 discrete private hearings and 10 public hearings; a total of 160. These represent 417 sitting days for the private hearings and 210 for the public hearings. The number of witnesses examined has been 643 and 547 respectively. These figures indicate that, although there have been far more private hearings than public hearings, on average, the public hearings have lasted far longer than the private ones.

The disparity in the number of private hearings compared to the public hearings is a function of the legislation which governs the procedures of the Commission. The Act imposes a prima facie obligation upon the Commission to hold open hearings. However, s. 90(2) states that the Commission may order that the hearing be closed to the public if it considers an open hearing would be unfair to a person or contrary to the public interest, having regard to the subject matter of the hearing or the nature of the evidence expected to be given. In the vast majority of cases, public hearings would have been unfair to a person or contrary to the public interest and, therefore, the Commission considered that it appropriate that they be closed.

In many instances, the Commission determined that a closed hearing was necessary in the public interest to prevent premature disclosure which may have prejudiced the

Commission's continuing investigation and alerted certain people involved in the conduct in question to issues that had yet to be investigated. This may have led to the destruction of evidence, the bringing of pressure to bear on potential witnesses or the fleeing from the jurisdiction by those who are the subject of the investigation. In a vast number of cases, the Commission considered that an open hearing would have been unfair because the witness or the person who is the subject of the investigation may have suffered detriment or harm to his or her reputation or integrity. Often witnesses were not prepared to speak or tell the truth for fear of retribution from those who are the subject of the investigation or those opposed to the investigation. If such hearings had been heard in public, the witness would have been intimidated and less likely to tell the truth.

The Commission is also mindful that if criminal proceedings are likely in the future, public hearings may prejudice those forthcoming criminal trials. In some instances, witnesses to be called had already been charged with criminal offences arising from the events under investigation. In investigative hearings, witnesses can be compelled to answer questions even if the answers incriminate them. Whilst those answers could not be used against them in criminal and disciplinary proceedings, the publication of those answers could quite clearly jeopardise the chance of those people obtaining a fair trial. Indeed, such publication could even amount to a contempt of the court in which the charges were to be heard.

Where the issues under investigation have been contentious and have attracted public comment, it is likely that if the hearings were open to the public, the evidence of witnesses would be widely publicised. In such circumstances, it is foreseeable that this could either intentionally or unintentionally influence the recollection and/or evidence of witnesses called later in the proceedings. The Commission has determined, in some cases, that it was in the public interest to ensure that the efficacy and the integrity of an investigation was not jeopardised in such cases and ordered closed hearings.

Within its statutory framework, the Commission considers that public hearings should primarily be confined to the investigation of chronic and pervasive problems in public administration which cannot be dealt with by the criminal justice system per se. For example, the two public hearings into jury tampering, the public hearing into the unlawful disposal of waste in South-East Queensland and the Basil Stafford public hearing. Further examples can be seen in the Yock and Condren public hearings where there was a concern that there had been a fundamental breakdown in the criminal justice system and that a disadvantage had been experienced by members of the community merely because of their race. That is not to say that there are no exceptions to this rule of thumb as evidenced by the Saunders investigation. In that case, the long-term controversy over the issues, the age of the matter and the

publication of the allegations on many occasions beforehand were matters which caused the Commission to consider that an open hearing would not be unfair to any person or contrary to the public interest.

It should be noted that when the Parliamentary Committee for the NSW ICAC attended at the offices of the Commission as part of their review of the ICAC, they indicated a strong preference for closed hearings. This was due to the considerable injustice which had been caused by publicity generated during public hearings held habitually by the ICAC. In any event, effective law enforcement requires that most investigations be conducted confidentially. No-one would suggest that the Homicide Squad should daily report the detail of its investigations, that is leads, clues and suspects, on the leading pages of the daily press, so why therefore should the Commission be required to operate in a way which is contrary to the effective discharge of its functions?

THE COMMISSION EXPOSES THOSE THAT IT INVESTIGATES TO A RISK OF DOUBLE JEOPARDY

One often hears the complaint, particularly from police officers and other public officers, that the Commission infringes the rules of double jeopardy by taking or recommending disciplinary action against an officer in relation to circumstances which also give rise to a criminal charge against the officer. Such complaints result from a misunderstanding of the law.

The confusion probably stems from misconstruing several provisions of the statute law, including:

- s. 16 of *The Criminal Code Act 1989*, which provides that '[a] person cannot be twice punished either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission'

- s. 17 of the *Criminal Code Act 1989*, which provides that '[i]t is a defence to a charge of any offence to show that the accused person has already been tried, and convicted or acquitted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been acquitted upon indictment, or has already been convicted, of an offence of

which he might be convicted upon the indictment or complaint on which he is charged'

- s. 45(1) of the *Acts Interpretation Act 1954*, which provides that 'if an act or omission is an offence under each of two or more laws, the offender may be prosecuted and punished under any of the laws, but the offender may not be punished more than once for the same offence'.

The High Court has decided that an administrative tribunal charged with the duty of dealing with breaches of discipline does not sit as a court of law and that the 'offences' created by a disciplinary code are not 'criminal offences' (*R v White*, ex parte Byrnes (1963) 109 CLR 665).

It has also been held that a direct effect of this classification is that an 'offence' against discipline cannot be an 'offence' in respect of which s. 17 of the *Criminal Code Act 1989* could operate. Furthermore, although s. 16 of the Code refers to the expression 'act or omission' and not to the term 'offence', the section has been interpreted as referring to acts or omissions punishable as offences because the Code does not contemplate punishment being imposed otherwise than upon a conviction for an offence (see *Sudi Yaku v Commissioner of Police*, ex parte The State (1980) PNGLR 27 and re *Seidler* (1986) 1 Qd R 486). In Seidler's case, Carter J explained the rationale for this approach:

> It would be absurd if a public servant convicted of stealing monies from his employer by a criminal court, could not then be dismissed from service. Conversely, where an employee was demoted or disrated as a result of disciplinary proceedings, it would be equally incongruous if later criminal action in respect of that act or omission could not be instituted.

His Honour held that his reasoning applied equally to s. 45 of the *Acts Interpretation Act 1954*. The logic of this approach is explained in the following passage from a judgment of the Saskatchewan Court of Appeal in *R v Wigglesworth* (1984) 7 DLR (4th) 361, at 365-366 upon which His Honour relied:

> A single act may have more than one aspect, and it may give rise to more than one legal consequence. It may, if it constitutes a breach of the duty a person owes to society, amount to a crime, for which the actor must answer to the public. At the same time, the act may, if it involves injury and a breach of one's duty to another, constitute a private cause of action for damage for which the actor must answer to the person he injured. And that same act may still have another aspect to it: it may also involve a breach of the duties of one's office or calling, in which event the actor must account to his professional peers. For example, a doctor who sexually assaults a patient will be liable, at one and the same time, to a criminal conviction at the behest

> of the State; to a judgment for damages, at the instance of the patient, and to an order of discipline on the motion of the governing council of his profession. Similarly, a policeman who assaults a prisoner is answerable to the State for his crime; to the victim for the damage he caused, and to the police force for discipline.

It has been recognised that part of the confusion of those who support the double jeopardy argument stems from their misconceiving the character of disciplinary proceedings. Unlike the criminal law, the object of disciplinary proceedings is not to punish the transgressor. For example, it has been held that the object of disciplinary proceedings under the discipline regulations governing the AFP is 'to protect the public, to maintain proper standards of conduct by members of the Australian Federal Police and to protect the reputation of that body' (see *Hardcastle v Commissioner of Police* (1984) 53 ALR 593). The court there held that:

> [t]here is no room for the application of what is sometimes misleadingly called the principle of double jeopardy in this case. If the appellant were charged with, and convicted of, the same unlawful assaults as are the subject of the disciplinary offence he would not face double jeopardy or be punished twice for the same offence. He would be convicted of an offence against the criminal law and be guilty of a breach of the disciplinary code of the Australian Federal Police. The two proceedings are essentially different in character and result.

THE COMMISSION'S INVESTIGATIONS TAKE TOO LONG TO BE FINALISED

There were unacceptable time delays for a period after the establishment of the Complaints Section which caused hardship to some persons.

Having regard to the statistics referred to below, the Commission considers the vast majority of complaints are now finalised in a timely fashion and that concerns about delays stem from problems experienced by the Commission in times past.

A number of factors contributed to delays in some cases including:

INSTANT BACKLOG

When the Complaints Section was created in April 1990 it immediately received 66 matters which had been referred to the Police Complaints Tribunal and it was then nearly buried in an avalanche of complaints flowing from the release of a pent up demand for an independent investigation of complaints against police. The effect was

that after five months of operation the Complaints Section had over 628 matters on hand.

LACK OF STAFFING

Although as mentioned above the Complaints Section commenced receiving complaints in April 1990 it was not until August 1990 that the filling of 15 Inspector positions within the Complaints Section enabled the Commission to begin addressing the backlog. During the initial months the Complaints Section struggled on with six investigators.

NO DISCRETION

It was not until amendments were made to the *Criminal Justice Act 1989* in May 1992 that the Commission was granted any discretion as to which matters it investigated. Unless a complaint could, upon receipt, be dismissed as vexatious or frivolous, the Commission was obliged to undertake some investigation.

INCREASING WORKLOAD

Throughout the first three years of its operation the receipt of complaints continued to increase dramatically. In 1990/91 the Commission received 1,916 complaints. In 1991/92, 3,123 complaints were received. In 1992/93, 3,447 complaints were received. Obviously an increasing workload with a fixed staff establishment made it difficult for finalisation rates to be improved upon.

However, as a result of the restructuring of the Complaints Section, the growing expertise of its officers and a number of other initiatives the Commission has overcome these problems.

As a result of continuing efforts to improve finalisation times, approximately 60% of complaints are now finalised within two weeks of receipt. Almost 75% of complaints are finalised within eight weeks and over 80% of complaints are finalised within 12 weeks. Whilst the Commission appreciates that these figures indicate that slightly less than 20% of complaints take longer than 12 weeks to finalise there are a number of factors which can contribute to this. For example:

- It is sometimes considered desirable to await the outcome of the trial of the criminal charges which arose out of the incident which gave rise to the

complaint. During such proceedings all the parties will usually give evidence on oath and be subject to cross examination. To conduct a parallel investigation would, in some cases, be a duplication of effort and waste of scarce resources.

- In other cases witnesses may not be immediately available.

- Financial analysis of complex commercial transactions or accounts or the convening of investigative hearings or other time consuming investigative steps may delay matters being completed.

From time to time the Commission has the QPS undertake investigations on its behalf. The time taken by the QPS to undertake those investigations compares favourably with the details of the Commission's performance set out below:

- the most efficient Police Region on average took 18 weeks to finalise matters

- the least efficient region took on average 28 weeks to finalise matters.

The Commission appreciates that it is in the interests of both the complainant and the subject officer for complaints to be finalised as quickly as possible. It is the Commission's experience that the chance of sustaining a valid complaint increases if the matter is investigated immediately. The Commission also understands that the longer an investigation drags on the greater the stress on the subject officer. For these reasons it has constantly sought to improve its procedures with a view to reducing the time taken to finalise matters. Those efforts are bearing fruit.

THE COMMISSION HAS FAILED TO TAKE ACTION IN RELATION TO FALSE COMPLAINTS

Police officers, from time to time, allege with the support of their Union that the Commission has no interest in pursuing persons who make false allegations against police officers.

It has been Commission policy to pursue prosecutions in these matters wherever a charge can be proven and there are no obvious extenuating circumstances. The Commission appreciates the distress false complaints must cause to subject officers. However, the offences which are created by s. 34A of the *Vagrants Gaming and Other Offences Act 1931* and s. 10.21 of the *Police Service Administration Act 1990* are difficult to prove for the following reasons:

- It must be proven beyond reasonable doubt that the complainant knew that the allegations he or she made were false.

- It must be proven beyond reasonable doubt that the complainant knew that the representation would reasonably call for an investigation by a police officer.

- A prosecution cannot proceed on the uncorroborated evidence of a police officer or officers. That is it cannot proceed unless there is evidence from some external or independent source no matter how many police officers swear to the falsity of the allegations.

For these reasons and because there was doubt as to whether a complaint made directly to the Commission could form the basis of a prosecution under either of the above two sections, the Commission urged the amendment of the *Criminal Justice Act 1989* to create a new offence of making a wilfully false complaint to the Commission. That has now been included as s. 137 of the Act. The new section does not have the burden of the requirement that the falsity be corroborated by independent evidence but like the two pre-existing provisions it authorises the court to order the payment of compensation to the Commission for the costs incurred as a result of its investigation of the false complaint.

The new provision of the Act is not free from difficulty either, however. It would not appear to have application to complaints lodged at a police station before on-forwarding to the Commission. Such complaints obviously account for a large proportion of matters handled by the Commission and those matters will still need to be dealt with under the *Police Service Administration Act 1990* or the *Vagrants Gaming and Other Offences Act 1931* with the attendant difficulties. It is recommended in Chapter 11 that s. 137 be further amended to take this fact into account.

TABLE 2.12: MATTERS IN WHICH PROCEEDINGS HAVE BEEN TAKEN IN RELATION TO FALSE COMPLAINTS

Name of Complainant	Nature of Allegations Made	Recommendation and Sentence/Penalty Imposed
COOMBES, Neville	Police incivility during the issuance of Traffic Offence Notice.	On 25 June 1991 the Commission recommended to the Queensland Police Service that proceedings should be instituted under s. 10.21 of the *Police Service Administration Act 1990* against Coombes. In an ex-parte hearing at the Brisbane Magistrates Court Coombes was convicted and fined $250 - in default 14 days imprisonment. He was also ordered to pay $48.75 costs of the court plus $129 witness expense, plus $205.73 administration costs. Coombes was allowed 28 days to pay the fine and costs (Total $633.48).

Name of Complainant	Nature of Allegations Made	Recommendation and Sentence/Penalty Imposed
GRACE, Wendy Ann	Assault of a police officer, and receiving of 'corrupt' payments by another police officer.	Grace was charged with three counts of perjury and one of attempting to pervert the course of justice. The matters were heard in the District Court at Brisbane in February 1994 before His Honour Judge Shanahan. Grace pleaded guilty and was sentenced to 3 years probation.
PRESTON, William Elliot	Allegation that the complainant was assaulted by a police officer whilst being interviewed	Upon a complaint being made against him the police officer produced a tape recording of the incident to the CJC, which disclosed that Preston threatened to make himself sick to get the officer into trouble. The tape did not disclose that Preston had been assaulted in any way. A letter was sent from the Commission on 3 October 1991 to the Commissioner of the Police Service recommending that Preston be charged with making a wilful false complaint.

Name of Complainant	Nature of Allegations Made	Recommendation and Sentence/Penalty Imposed
PRESTON, William Elliot (continued)		On 5 January 1993 Preston was convicted of this offence in the Brisbane Magistrates Court. Preston was fined $400 and was required to pay costs. The costs amount to $48.25 for Court costs and $173.22 for the costs of investigations conducted by the Commission. (Total $621.47)
T	Complainant alleged that she was raped in a Watchhouse cell by Police	T's complaint was investigated by an officer of the Commission and T was subsequently charged by Maryborough police in relation to making a false complaint. T failed to appear before the Maryborough Magistrates Court in relation to this matter. On 25 November 1992 a warrant was issued for the arrest of T by the Brisbane Magistrates Court. The warrant was made returnable to the Maryborough Magistrates Court. T has not yet been apprehended by police.

Name of Complainant	Nature of Allegations Made	Recommendation and Sentence/Penalty Imposed
COOK, David John	Allegation that the complainant was wrongfully arrested and assaulted by police officers.	The complaint to the Commission consisted of allegations that Cook had been wrongfully arrested and assaulted by the police. On 21 January 1992 Cook was served with a summons in relation to making a wilful false complaint to the Commission against police. Cook appeared before the Southern District Magistrates Court on 12 March 1993 to answer this charge. Cook was convicted and fined $300. In addition to that, he was ordered to pay $48.75 for court costs and $679.86 for restitution. (Total $1,028.61).
RICHARDS, S J NESPOLI, R J	Complainants who are tow truck drivers alleged that a police officer threatened them and made sure they did not receive towing jobs on to occasions.	On 22 July 1993 the complainants were both convicted of offences against s. 10.21 of the *Police Service Administration Act 1990*. They were fined $750 each and were ordered to pay $768 costs each for the relevant investigation - (Total $1,518 each).

Name of Complainant	Nature of Allegations Made	Recommendation and Sentence/Penalty Imposed
Z	Complainant alleged that excessive force was used during his arrest and that police officers fabricated evidence against him.	Complainant charged with making a false complaint pursuant to s. 10.21 of the *Police Service Administration Act 1990*. The matter was heard on 25 February 1994 at the Beenleigh Magistrates Court. The Magistrate found that there was a case to answer and the matter was adjourned to 17 May 1994. On that date the complainant was acquitted of the charge.

TABLE 2.13: MATTERS IN WHICH PROCEEDINGS ARE PENDING

Name of Complainant	Nature of Allegations Made	Recommendation and Sentence/Penalty imposed
A	Allegation that a police officer misappropriated property.	A charge of wilfully making a false complaint pursuant to s. 10.21 is pending.
B	Allegation of assault by a police officer.	A charge of wilfully making a false complaint pursuant to s. 10.21 is pending.
C	Allegation of assault by police officer.	A charge of wilfully making a false complaint pursuant to s. 10.21 is pending.
D	Allegation of assault by police.	A charge of wilfully making a false complaint pursuant to s. 10.21 is pending.

Note: The persons referred to in the above tables cannot be identified as they have not been convicted.

THE COMMISSION HAS FAILED TO PROVIDE ADEQUATE ADVICE AND SUPPORT TO WHISTLEBLOWERS

The Commission has been subjected to some criticism from time to time in the media about its treatment of whistleblowers. The main import of that criticism is that the Commission uses the information provided by whistleblowers without providing adequate follow-up counselling and support to those persons.

The Commission encourages persons to report cases in which they reasonably suspect that a public officer is involved in corrupt conduct or conduct that otherwise constitutes official misconduct. The Commission is mindful that persons who do blow the whistle must be given adequate support. Failure to provide such support will inevitably lead to other persons being deterred from "blowing the whistle".

The Commission supports whistleblowers in the following practical ways:

- Under s. 131 of the Act, a person who prejudices the safety or career of another person or does any other act that is likely to be to the detriment of another person because that person (or any other person) has given evidence to or assisted the Commission in the discharge of its responsibilities commits an offence against the Act and is liable to a penalty of 85 penalty units. Furthermore, where a person engages in conduct that contravenes s. 131, the Commission may apply to the Supreme Court for an injunction in any terms the court thinks appropriate. The Commission has found it necessary to use this power only once, although it has threatened to use it on other occasions. In that case, the Commission had reasonable grounds for believing that a local authority's decision to dismiss its Shire Clerk resulted from the Shire Clerk providing information to the Commission of suspected official misconduct on the part of certain councillors.

- The Commission recognises that people who blow the whistle can be subjected to intense emotional pressure from others including work colleagues and even family members. For this reason, the Commission has recently appointed an experienced psychologist to carry out the role of Whistleblower Support Officer (see p. 155).

- Where a person who assists the Commission is subjected to threats to the safety of the person or the person's relatives, the Commission conducts a threat assessment for the purpose of determining whether the person should be admitted to the Commission's Witness Protection Program.

However, the Commission recognises that whistleblowers need more than legislative protection. In October 1993 the Commission began work on establishing the Whistleblowers Support Program to offer counselling, crisis intervention and welfare referral to those people who report official misconduct to the Commission. In doing so, the Commission took account of the research carried out both internationally and within Australia in establishing this program.

The program is located in the Corruption Prevention Division and focuses on people who have reported suspected misconduct or official misconduct to the Commission, and, in addition to the advice and counselling function, will initiate training for Commission staff who deal with whistleblowers and witnesses thereby providing them with greater insight into the problems that whistleblowers encounter.

The manager of the program is a senior psychologist with many years of clinical and practical experience. He took up duties in June 1994 and can act with considerable professional autonomy. This program has been separated from the other Commission activities so that it can operate with a high degree of confidentiality.

The major functions of the program are to:

- provide confidential advice and support to whistleblowers and other complainants to the Commission which is consistent with the *Criminal Justice Act 1989* and other legislation

- provide training to Commission staff dealing with whistleblowers and witnesses and provide professional support to staff including counselling, referral and field work

- provide telephone and personal advice, counselling and appropriate referral to persons making complaints to the Commission

- contribute to the debate on whistleblowing protection and support through policy advice, professional papers and participation in conferences and workshops

- provide training, supervision and consultancy to Commission staff on matters related to the handling of whistleblowers and complaints

- provide liaison, consultancy and policy advice to other agencies involved in whistleblowers support

- prepare and monitor confidential and accurate case records and reports to assist in the support of whistleblowers
- provide counselling support and referral on a confidential basis
- carry out appropriate research on whistleblowing and its effect on complainants
- provide practical help and assistance to whistleblowers.

The manager of this program is developing training initiatives to assist investigators and complaints officers develop a greater understanding of the pressures and stress levels experienced by whistleblowers.

Much of the criticism directed at the Commission has stemmed from an organisation styling itself the 'Whistleblowers Action Group' (WAG). The Commission is aware that WAG has made submissions to the Parliamentary Committee from time to time. The Commission first sought to liaise with WAG in November 1993 and discussions were finally held in May 1994 prior to filling the position of manager of the program. This was a constructive meeting and the appointee has undertaken to further liaise with WAG particularly in the areas of training and referral.

Finally the Commission is currently preparing a booklet for whistleblowers which will offer advice on various aspects of whistleblowing and recommend that those who whistleblow to the Commission obtain advice and support through the Commission's Whistleblowers Support Program.

THE COMMISSION IS A "SUPER POLICE FORCE"

This comment was originally advanced by Mr Terry O'Gorman while he was the President of the Council for Civil Liberties. As Vice President, he continues to advance this criticism which has been taken up by others. The comment is an emotive device which carries with it pejorative connotations. In fact 'super' is a Latin tag meaning 'on top of, above or beyond'. Every function given to the OMD could be so classified, that is, on top of the functions already discharged by the QPS. The vice that he perceives in so describing the Commission's organised crime role is that the Commission should co-operate and act in association with the QPS. His view is that the Commission's role should supervise, overview or control police, a role which ultimately would be self-defeating.

Related criticisms advanced by Mr O'Gorman and others are that:

- the Commission has become too heavily involved in the investigation of organised crime, a role which the Fitzgerald Report considered to be a minor role

- the NCA could effectively undertake the Commission's role in the investigation of organised crime

- the Commission is increasingly diverting resources to the investigation of organised crime to the detriment of the investigation of complaints of misconduct and corruption

- the QPS is using every opportunity to attach itself to the Commission's compulsory processes.

These criticisms have most recently been advanced by Mr O'Gorman in an article in a recent issue of the Caxton Legal Centre newsletter which dealt with the Commission.

As the Commission can reasonably anticipate that the same criticisms have been advanced in the submission by the Council of Civil Liberties to the Committee in respect of this review (a submission to which the Commission does not have access at the time of compiling this submission), the Commission proposes to respond to each criticism.

THE ORGANISED CRIME FUNCTION

Four observations are in order here:

- Contrary to the suggestion made by Mr O'Gorman, Fitzgerald did not see investigation of organised crime as a minor role of the Commission. The Fitzgerald Report dealt with the problem of organised crime in some detail (see pp. 161-164). Later, in discussing the need for the CJC to have an Intelligence Division, Fitzgerald described the primary role and function of this Division as being to provide 'an effective criminal intelligence service as a hub of an integrated approach to major crime, especially organised crime, and criminal activity transcending the normal boundaries associated with local policing' (p. 317). This statement was subsequently incorporated, in slightly amended form, into the *Criminal Justice Act 1989* [s. 58(1)]. Under s. 23(f) of the Act, the Commission is also given the responsibility of investigating

organised or major crime where, in the opinion of the Commission, that function cannot be appropriately or effectively discharged by the QPS. In short, the Commission's current activities in the area of organised crime are fully in accord with its statutory obligations – we have not, as Mr O'Gorman seems to imply, strayed from the "true path".

- The investigation of organised crime has *not* led to increasing resources being diverted from other areas of the Commission. At present, around 80% of the resources of the OMD are devoted to the investigation of official misconduct and corruption. This will continue to be the case. The Commission has committed full-time, the resources of only one MDT to the investigation of organised crime, in the form of the Commission's contribution to the Joint QPS/Commission Organised Crime Task Force. It also should be pointed out that there is often no clear dichotomy between organised crime and official corruption. Increasingly, the Commission is finding that it is uncovering substantial official corruption through the investigation of organised crime groups. In fact, there is considerable evidence available to suggest that organised crime cannot operate successfully without some level of official corruption (see pp. 43-44).

- The Commission is not duplicating the work of the NCA. The NCA sees the role of the Commission in the area of organised crime as complementary to its own role. The NCA co-ordinates national operations against organised crime groups, while the Commission operates at the State level and nationally through the NCA. The Commission, through the use of its special powers, multi-disciplined structure and Proceeds of Crime Unit, has been able to effectively investigate and gather evidence and criminal intelligence relating to organised or major criminal activity in Queensland, locate and seize criminally tainted assets, and effectively participate in co-ordinated national investigations.

  Further, the NCA may only use its compulsory powers after having been granted a reference to conduct a special investigation. The reference must be granted by the Commonwealth and/or State and Territory Governments and approved by the Inter-Governmental Committee of Ministers responsible within their jurisdictions for the *National Crime Authority Act 1984 (Cwlth)*. The Commission on the other hand is not subject to political direction in ordering its priorities. The NCA references are underpinned by a list of persons who are to be the subject of investigation or persons who are closely associated with the named persons. The fundamental flaw in this approach is the proposition that at the commencement of an investigation the investigator can exhaustively nominate the persons or close associates thereof

who will be relevant to the investigation. Clearly such an approach begs the question. In many, if not most cases, it will only become apparent progressively as the investigation proceeds and information and evidence is gathered. Lines of inquiry are restricted – a full inquiry is inhibited.

- As mentioned above, in s. 3 where the objects of the Act are stated, there is a clear statement of legislative intention that one of the purposes of the Commission is:

  'to take measures to combat organised or major crime for an interim period'.

  The Act does not provide specific guidance as to the duration of that period or the test to be applied in determining when that period has concluded. However, s. 23(f) does provide some guidance and the Commission's view is that the test must be when, in the terms of s. 23(f) the QPS can 'effectively discharge' such investigations.

  In seeking to fulfil its responsibilities in the light of this object the Commission has acted as far as possible in co-operation with the QPS with a view to developing that Service's level of skill and expertise in this area of investigation. The establishment of the JOCTF referred to above is just one expression of this approach. While the Act invests the Commission with jurisdiction to investigate organised and major crime for an interim period, there is much yet to be achieved before it could possibly be argued that the function is expended.

THE COMMISSION IS "TOO CLOSE TO POLICE"

The thrust of this criticism appears to be that the Commission has become too close to police and is too willing to allow the QPS access to its special investigative powers.

In relation to the first of these points, Mr O'Gorman seems to assume that a confrontationist stance towards the QPS would be more productive than an approach which recognises that there is scope for co-operation, persuasion and informal feedback. In the Commission's view, it would ultimately be self-defeating for the Commission simply to take on the role of external overseer of the QPS. Perhaps the best example of the limitations of this strategy is the apparent failure of the ICAC in New South Wales to deal with police corruption in that State after five years of operation. There, the public and parliamentary frustration has been so great that the matter has been taken out of the hands of the ICAC and given to a Royal Commission. In Queensland, by contrast, the evidence to date suggests that the work

of the Commission is bringing about a cultural realignment within the QPS. Corrupt elements are being exposed and reported to the Commission from within the QPS and the investigation of corruption allegations is being actively assisted.

In relation to the second point, it is simply not true that the QPS is now using every opportunity it can create to attach itself to the Commission processes so that it can get access to the Commission's special powers. In the past 12 months, the Commission has received only six requests for assistance from the QPS. Each has been carefully recorded and then assessed by senior members of the Commission's legal staff before referral to the Chairperson for his consideration and decision. The Commission has no intention of making its powers freely available to the Police to assist in the investigation of "run of the mill" cases. It invokes this jurisdiction only for criminal activities committed in circumstances which suggest an organised crime involvement.

FUTURE DIRECTIONS

The OMD has progressed from the early stages of implementing the vision of the Fitzgerald Report and the role and functions outlined in the *Criminal Justice Act* through the sometimes painful learning and adaptive period where the processes of the Division were reviewed and recast to achieve the effectiveness now evident in the operations of the Division. While it is not suggested that the strategies and processes of the Division are perfect, much of significance has been achieved in developing the work of the Division. The future direction of the Division will encompass the consolidation of these achievements and the development and implementation of new approaches to the functions of the Division.

PUBLIC ADMINISTRATION INTEGRITY – COMPLAINTS INVESTIGATIONS

To consolidate the strategies already adopted by the Division, measures will be taken to:

- Develop guidelines modifying Chief Executives' responsibilities to report suspected official misconduct. These guidelines encourage an appropriate level of reporting of improper conduct by public servants and provide a co-ordinated approach to the treatment of this conduct by the Department or body and the Commission.

- Further reduce the time taken to complete investigations through improving the investigative process, exploring alternative resolution procedures and dedicating resources to the more complicated and difficult investigations.

- Increase the use of information collected through the investigative process for proactive approaches to the improvement of integrity in public administration in Queensland, for example, improved data collection and analysis will facilitate the reporting and targeting of current problem areas to assist managers in the public sector.

To improve the quality of service delivery:

- A surveying strategy has been developed with the assistance of the Research and Co-ordination Division to obtain feedback on the level of satisfaction of complainants and subjects of complaints with the effectiveness, efficiency and fairness of complaints investigations and other resolution processes adopted by the Division.

- As a result of these surveys, skills development programs will be held for staff of the Division dealing with complainants and subjects of complaints and the appropriateness of the Commission's processes will be continually reviewed.

- In partnership with chief executives, proactive approaches will be developed for identifying and investigating existing areas of corruption in their departments and agencies particularly high risk areas of service delivery in government programs.

- Appropriate measures will be taken to provide improved support for whistleblowers.

ORGANISED AND MAJOR CRIME

INVESTIGATIONS

The direction of organised and major crime investigation activity is firmly in place and the Commission is confidently looking forward to further significant successes in dealing with areas of organised criminal activity which have not been adequately dealt with by other law enforcement agencies. To maintain this direction in the

Commission's work, existing strategies will be modified as required to meet the challenges presented by the ever-increasing sophistication of organised crime.

Continuing strategies include:

- Multi-agency investigations – cooperative investigations are appropriate in response to the existing trend for organised criminal groups to operate nationally and internationally without regard to borders.

- Continuation and development of specialist services – developments in the environment in which organised crime operates make it imperative that specialist investigators and the tools and techniques they use are up-to-date. Meeting the challenge to remain technically up-to-date in the areas of financial analysis, electronic surveillance as well as maintaining the necessary level of cultural and language expertise will involve a significant commitment of resources.

- Integration of specialist services – a key achievement of the Division is the intimate integration of specialist services into conventional criminal investigative processes thereby ensuring that each discipline knows when to have input and when to seek the input of other disciplines.

- Exercise of the Commission's compulsory powers – the use of the Commission's compulsory powers is essential to the successful investigation of organised crime.

- Taking appropriate action to restrain and confiscate the proceeds of crime.

- The preparation of high quality briefs of evidence for the assistance of the Director of Prosecutions.

- Identification and investigation of growing areas of organised crime such as possible threats posed by groups emanating from the former Communist regimes of Eastern Europe.

- Assessment of the interaction among and integration of various culturally based organised crime groupings and development of appropriate investigative responses.

CO-OPERATION WITH THE CORRUPTION PREVENTION DIVISION

Through a joint initiative with the Corruption Prevention Division, the Division will develop proactive approaches to assist Chief Executives of departments and agencies to identify and to investigate areas of high corruption risk particularly those high risk areas of service delivery in government programs.

More particularly, the Division will work closely with the CPD to:

- identify and refer cases where investigations have revealed serious management or systems shortfalls or inadequate policies, guidelines and procedures that allowed corrupt activity to take place
- develop effective information brochures providing information to complainants and explaining the complaints assessment procedure
- develop information in languages other than English on understanding and reporting official misconduct, the process of making a complaint and reporting suspected organised crime activity
- develop training programs for Division staff who have direct contact with whistleblowers.

GENERAL INTERNAL AND EXTERNAL DIRECTIONS

The Division can indicate that some general issues are to be dealt with in the future:

- improvements in the case management and information management processes within the Division
- attention to the competence of staff and leadership in the Division through targeted staff training and development and leadership development
- continuing support for national initiatives to increase the uniformity and consistency of law enforcement across Australia.

CHAPTER 3 – INTELLIGENCE DIVISION

BACKGROUND

Fitzgerald observed that:

> Comprehensive accurate information is essential to combating crime, especially organised crime. Yet our national system of sharing and acting on intelligence about crime is hopelessly inadequate.
>
> A fragmented, inefficient or incomplete intelligence gathering network is an enormous reassurance for organised criminals. It means that essential connections will be missed, and only an incomplete and distorted picture will be gained of their activities.
>
> As it stands, Australian law enforcement agencies and Government instrumentalities are fragmented and hampered by jealousies, rivalries and lack of co-operation. Information exchange, when it happens at all, is on an ad hoc basis.
>
> Our law enforcement agencies are failing to keep up with organised crime. (p. 168)

In recognising the vital importance of correct information processing and effective criminal intelligence in combating organised crime and major crime, Fitzgerald recommended the establishment of an Intelligence Division which would assist in addressing his findings in respect of official misconduct and organised crime by providing:

> an effective criminal intelligence service as the hub of an integrated approach to major crime, especially organised crime, and criminal activity transcending the normal boundaries associated with local policing . . . (p. 375)

Fitzgerald's recommendations for a suitably equipped, professional and specialist criminal intelligence unit, independent of the Police Force, were subsequently incorporated into the *Criminal Justice Act 1989*.

Section 23(d) of the Act provides the Commission with the responsibility of:

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

Section 58 of the Act provides a specific role and functions for the Intelligence Division in meeting this responsibility as an entity within the organisational structure of the Commission.

As mentioned in Chapter 2 of this submission, this Division does not act alone but works closely with the OMD and the Witness Protection Division to effectively discharge the Commission's functions designed to counteract official misconduct and organised and major crime.

Fitzgerald described 'effective criminal intelligence' as being the 'hub' of an integrated approach to the investigation of organised crime, major crime and criminal activity transcending the normal boundaries of criminal activity that is subject to local police action. Fitzgerald's recommendations in this respect were for the intelligence function to be performed by the CJC through its Intelligence Division, which would concentrate specifically on building a suitable database of intelligence information and managing such information to ensure its integrity and correct use. These functions are specifically laid down in s. 58(2) of the Act. To facilitate the collection of criminal intelligence information, s. 60 of the Act also provides for such material to be forwarded to the Intelligence Division by the OMD and by the QPS.

The Intelligence Division became operational in June 1990 with an initial establishment of 16 persons. During its formative months the Division operated with manual systems while steps were taken to identify appropriate equipment to assist in achieving the role perceived by Fitzgerald.

Building a new intelligence function from the ground up was one of the more complex tasks undertaken by the Commission. Suitably qualified staff were recruited and systems procedures, training and liaison channels established. The Division is now well accepted as part of the Australian and international law enforcement intelligence community.

STRUCTURE

The most important phase of producing an intelligence product is the analysis of available information. Intelligence analysis is where the body of information is interpreted and critical judgements are made by an analyst about its meaning and implications for his or her organisation. This involves an interaction between the

available information, the analyst's perceptions based on previous experience, and his or her capacity to objectively interpret meaning.[3]

It therefore follows that, for an analyst to be successful in this capacity, he or she will require a broad range of experience and an open and objective outlook. With this in mind the Division has recruited its analytical staff from law enforcement, military and civilian intelligence backgrounds and in the process has developed a reservoir of skills in both tactical and strategic intelligence areas. The average analytical experience held by intelligence analysts within the Division is 13 years, a level of specialised service which is difficult to achieve within a police environment due to the frequency of transfers and promotions.[4]

The Division is structured to take full advantage of its analytical expertise in carrying out its obligations under the Act. Three specialised teams of analysts are engaged in performing intelligence duties whilst a fourth team is responsible for the management of the Commission's Criminal Intelligence Database (the Database) and related material. The need for this latter area was not fully realised when the Division was first established and as a result an increase in the Division's establishment was necessary to cater for this important function as it developed.

When first established the Division placed emphasis on the analytical area, with 11 analysts recruited to meet the needs of the Commission. This initial approach catered for immediate analytical needs. However, for the intelligence function to operate effectively, appropriate resources are required to support the analytical function and properly manage the Database, a matter which Fitzgerald rightly foresaw would be vital to the success of an integrated approach to combating organised crime.

Today the Division's analytical component remains unchanged; however the Commission has addressed the important area of data management and support by providing a further seven officers to allow for the effective operation of the Database, including systems administration, quality control, data collation, data entry, and information retrieval duties.

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3 For further discussion on strategic intelligence, see *Strategic Crime Intelligence Explained*, National Crime Authority, March 1994.

4 These difficulties are highlighted in the report of the *Review of Commonwealth Law Enforcement Arrangements* at para. 10.38, p. 160, which discusses the problems experienced by the ABCI in this area.

ACHIEVEMENTS

DATABASE

As recommended by Fitzgerald, the Database was developed and is managed by the Division. The Division was initially faced with a formidable task in building a database from the ground up. The Division approached this task by:

- commencing the back-capture of relevant intelligence material from the Fitzgerald Inquiry
- collating intelligence material resulting from the Commission's operations
- commencing proactive collection of data relevant to organised crime and major crime with a view to assessing the potential threat posed to Queensland by the traditional areas of organised crime.

To facilitate the collation and analysis of the collected material, the Division identified a computerised storage platform for the Database.

After careful consideration of aspects relating to functionality, security and compatibility, the Commission chose a modified version of the system used by the Australian Bureau of Criminal Intelligence (ABCI). That platform was implemented in January 1992, with assistance from the ABCI, and now operates in a stand-alone environment on the Commission's premises. During that year the Division placed a major emphasis on the backcapture of data, a task which was completed in January 1993. In early 1994 the Database was upgraded to incorporate enhancements developed by the ABCI which, in addition to improving the technical aspects of the Database, also included a new document registration system to replace the earlier independent system developed by the Division.

To ensure that the integrity of the Database is maintained, certain staff of the Division are now specifically designated as Systems Administrator, Quality Control Officer, and Data Entry Officers. Strict guidelines are in place to ensure that only crime related data is retained within the Division's holdings and that the integrity of this data is maintained. These guidelines incorporate privacy principles, ensure the security of information and its correct handling, storage and retrieval. Developed and adopted by the Commission on its own initiative, the guidelines will enhance the Commission's accountability in a difficult area.

The Database now contains a significant amount of refined data highlighting the complex groupings and sophisticated criminal methods of organised crime and major crime activity in Queensland together with the persons and organisations involved in such activities. This information has proven to be of considerable value during the Commission's own operations as well as in joint operations with other agencies, particularly on a national basis. The Database has also enabled the preparation of comprehensive replies to requests from other agencies, such as the ABCI.

Intelligence also benefits the decision making process in respect of the targeting of operations and deployment of resources. The analysis of data collected by the Division itself or through investigations by the Commission's MDTs has assisted in decisions regarding these matters.

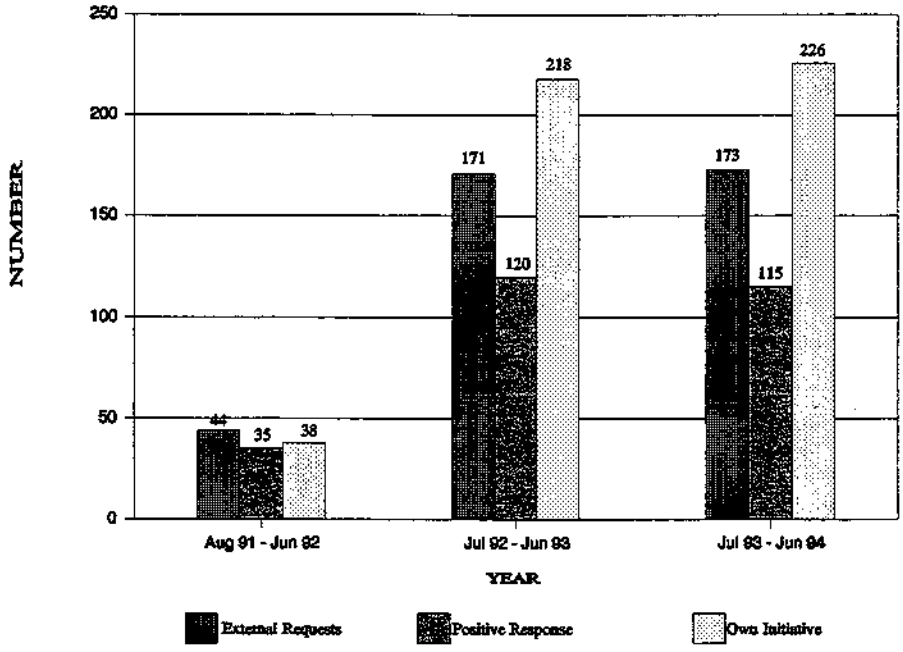
CO-OPERATION

The Division has always practised a philosophy of co-operation and mutual assistance through an established recognition that organised crime cannot be successfully attacked by agencies working independently. The Division has established an extensive liaison network with other law enforcement and government agencies throughout the country and overseas. The Division regularly liaises with these agencies and is an active participant in the nationally co-ordinated efforts which target certain aspects of organised crime.

The Commission's intelligence holdings benefit the CJC and other law enforcement agencies, both State and Federal, with information frequently exchanged for law enforcement purposes in accordance with Memoranda of Understanding as discussed on page 29. The quality of the Database is highlighted by the high rate of relevant responses to enquiries from other agencies about criminal activity in Queensland.

Information is disseminated regularly, either at the instigation of the Division or in response to a request from another law enforcement agency. From July 1992 to June 1993, the Division disseminated intelligence to other law enforcement agencies at its own initiative on 218 occasions. In addition, during the same period, the Division also responded to 171 requests for assistance from other agencies and was able to provide useful intelligence in 120 of these occasions. From July 1993 to June 1994, the Division experienced a similar demand with intelligence disseminated at its own initiative on 226 occasions. In reply to 173 external requests for assistance the Division was able to positively respond on 115 occasions (see Figure 3.1).

FIGURE 3.1: DISSEMINATION OF INTELLIGENCE



The Figures relating to dissemination at the Division's own initiative include disseminations which range from individual pieces of information concerning activities more appropriately dealt with by other law enforcement agencies, to more lengthy tactical and strategic intelligence assessments relating to organised crime activities. Forty-one such reports have been disseminated since the Division commenced operation. More specifically from July 1992 to June 1993 the Division disseminated 10 tactical and five strategic reports, and from July 1993 to June 1994 nine tactical and three strategic reports were disseminated.

Internally, the Division works closely with the OMD. It also provides a dedicated information retrieval service for officers of the Commission engaged in investigations and analysis. This service facilitates the smooth access to information held by the Division and to other information through specialised liaison with other agencies within Queensland and nationally. The centralisation of this service allows for appropriate checks and balances in respect of access to various data and provides a suitable audit trail. The workload of this area has increased considerably as the Commission's investigations have advanced. In 1991/92 the section responded to 3976 requests, whilst in the past two years (1992/93 and 1993/94) requests have totalled 5069 and 5077 respectively.

SECURITY

Section 58(2)(c) of the Act provides that the Database and records in possession and control of the Division must be secured so that only persons who satisfy the Director of the Intelligence Division or the Chairperson that they have a legitimate right to the information have appropriate access to it.

The Division is an independently secure area within the Commission's premises. Physical access is restricted to Commission personnel and staff of other law enforcement agencies during the course of legitimate law enforcement duties where a need exists to liaise with the Division's staff. The Division's hard copy records are securely stored with access subject to the authorisation of the Director. With respect to the Database, the entry, manipulation and retrieval of information is restricted to Division staff and is subject to stringent security measures. These measures have been in place since the Division began its operation and have been amended as necessary with the advent of new equipment. For example, the installation of the Division's dedicated hardware and software to house the Database resulted in enhanced security.

Access to the Database is electronically controlled and a full audit log is maintained in this respect. Senior staff of the Division conduct audits on a regular basis. The hardware itself is maintained in a secure area with restricted access. Awareness of security measures remains an integral part of in-house training provided to Division staff. Procedures are in place to document all requests for information searches either from within the Commission or from external agencies. Upon satisfactory confirmation that the request is in accordance with the Division's procedures and that the enquiring person or agency has a justified need and right to know, a senior member of the Division may authorise dissemination of material in reply to the request. All disseminations, whether at the Division's instigation or in response to a request, are documented and regularly audited.

During 1993 the Commission experienced occasions where unauthorised access was gained to intelligence material that had been previously disseminated in 1992, in accordance with the provisions of the Act. In the first instance, the Commission was able to quickly identify the source of the security breach as being a former employee of the Commission. Investigations in respect of two other occurrences failed to identify the source. As a result of these breaches of security, steps were taken to reduce the opportunity for such breaches to recur. It is not considered appropriate that the Commission further discuss its security procedures in a submission of this nature; however, details have been made available to the Committee as part of its ongoing review of the Commission's operations.

Following the Commission's investigation into the first security breach, the Committee conducted a review of the Commission's use of its power under s. 3.1 of the Act (now s. 69). In that review, the Committee stated that it believed that in the past the Division had disseminated material to Government departments that had no need to access it and that in doing so the Division may have breached its statutory duty. The fact is that the Commission has only ever disseminated intelligence material in strict accordance with the provisions of the Act under either ss. 58(2)(a) or 58(2)(e). Such dissemination has and continues to be restricted to law enforcement agencies with a need to access the disseminated material for law enforcement purposes, or, in the case of the latter section, to the Minister responsible for the Commission, or the Minister responsible for the Police, where the material is pertinent to the deliberations, policies and projects of the Government. Such disseminations are fully documented and audited. At the request of the Committee, an audit, conducted by the Director of Intelligence of the NCA in December 1993, found that the records of dissemination conformed with the Commission's statutory obligations.

The Commission remains confident that its retention and dissemination of intelligence material has always been in accordance with its statutory duty. Regular reviews of these functions are conducted. In 1993 the Commission enhanced procedures regarding the preparation and dissemination of written intelligence reports. Such reports have restricted circulation and are individually accounted for. Written reports continue to be provided to bona fide law enforcement agencies, where appropriate for law enforcement purposes. The reporting obligation under s. 58(2)(e) is performed orally when required. The Commission recognises that the security afforded to such reports is not necessarily compatible with the concepts of openness held by Fitzgerald but is necessary to avoid the substantial damage that can be caused. This aspect has been highlighted in previous submissions to the Committee and discussed in some detail both in camera and during public hearings. For this reason it will not be canvassed further in this submission.

STRATEGIC ASSESSMENT OF ORGANISED CRIME

Fitzgerald, in discussing organised crime (pp. 161-67), highlighted how

> it would be folly to overlook the experience of other countries, such as the United States of America, which have similar ethics but larger populations and are at a more advanced stage of economic development.

The Commission has adopted this approach as part of its ongoing examination of organised crime groups.

Initially the Division assessed the threat posed to Queensland by the traditional organised crime groups that have emerged as significant problems elsewhere in the world. Research of the experience in other countries such as North America and Europe suggested that threats may come from crime syndicates of Japanese and Chinese origin. Such groups are often referred to as Yakuza and Triads, respectively; however experience has shown that those involved are not always members of such secret societies. For similar reasons, the Division also chose to examine the activities of crime syndicates with members of Italian origin and the activities of outlaw motorcycle gangs. Following preliminary assessments of these areas, the Commission commenced a longer term proactive examination of organised crime using the full resources of its MDTs. The Division has continued to support these intelligence driven investigations which as of December 1992 have been conducted by the JOCTF (see pp. 29-34).

Since 1990, when very little was known about organised crime in Queensland, the Commission's work in this area has progressed to a point where it has produced a number of high quality strategic reports on traditional organised crime groups in Queensland. Briefings on these groups have been given to responsible Ministers under s. 58(2)(e) of the Act where appropriate. The quality of the intelligence assessments has been commended, particularly by federal law enforcement agencies.

These assessments have provided the Commission with a greater understanding of organised crime as it affects Queensland and form the basis on which targets are developed within the JOCTF. This process exemplifies the proactive approach to investigations adopted by the CJC which has already met with the success highlighted in Chapter 2. The strategies used in the intelligence and investigative areas are similar to those recognised in the recent report of the *Review of Commonwealth Law Enforcement Arrangements* (February 1994) as the most suitable in combating organised crime.

A major achievement in the way the Division operates is the integration of the process of developing strategic assessments with the process of investigating organised crime in this State. The development of this environment in such a short period has produced high quality strategic intelligence reports and investigative outcomes.

For example, in Operation Whitewash (see p. 35) the initial information from a confidential source was developed through intelligence assessment to enable the launching of Phase 1 of the operation. This phase involved working with the AFP to combat the activities of a large drug trafficking and distribution network operating within Queensland and on the eastern seaboard of Australia. Six major targets were arrested, charged and convicted following extensive surveillance and investigation.

The evidence gathered during Phase 1 was carefully analysed to identify the suppliers of the arrested traffickers who were identified for further investigation. A second phase, also involving the AFP, was launched, which resulted in a further five significant heroin traffickers being arrested and convicted. In all, 18 members of the heroin network were charged including the network head, who was recently sentenced to 20 years and is the most significant drug trafficker to appear before the Queensland courts in recent times. Following this conviction, the Commission was also able to pursue proceeds of crime action against the individuals concerned (see p. 41). As a result of the second phase, a further intelligence assessment, which identified another eight targets, was provided to the QPS for investigation. By combining the knowledge acquired during these operations with background research into the origins and culture of the persons involved in this crime network the Division was able to prepare a strategic assessment of the potential impact of such crime syndicates in the future.

OVERSIGHT OF BUREAU OF CRIMINAL INTELLIGENCE QUEENSLAND

Following the findings of the Fitzgerald Inquiry and the concerns regarding the use of intelligence material, Fitzgerald recommended that the police intelligence function be subject to oversight. This recommendation is reflected in s. 58(2)(d) of the Act which provides for the Intelligence Division to perform this function by overseeing the performance of the role of the Bureau of Criminal Intelligence (BCI). The Bureau is responsible for the general intelligence function within the QPS at large through its day to day activities and also those undertaken by the Counter-Terrorist and VIP Protection Section.

In late 1990, the Division completed a detailed assessment of the BCI that recommended significant changes to the Bureau's structure, procedures and relations with other sectors of the QPS. The report was accepted in its entirety and the recommendations implemented by early 1992. As part of the implementation of these recommendations, the Bureau produces a monthly management return which assists the Division in its ongoing oversight of the Bureau's role.

The Commission had intended to conduct a further assessment of the BCI in late 1992. However, these plans were postponed following the change of management at the QPS and due to other external reviews, including that of the PSMC and the assessment of the implementation of the Fitzgerald reforms by the Research and Co-ordination Division, which were relevant to the oversight role. Close liaison has continued with QPS management, in particular with the Assistant Commissioner State Crime Operations Command, who has overall responsibility for the BCI, and with senior members of the BCI responsible for its day to day functioning. The Division

also has the opportunity to monitor all significant correspondence, activity reports and intelligence assessments emanating from the Bureau and to provide advice, if required.

In addition to its formal oversight role, the Division has worked closely with the BCI to prepare target proposals and conduct strategic projects. The development of the Queensland Police Intelligence Network (QPIN), which links intelligence officers from District, Regional and Police Headquarters level, has provided the Division with access to tactical information and as such made a useful contribution to the Commission's overall collection strategies in respect of organised crime activity. The QPIN is supported by the QPS Intelligence Database (QUID) and the Division has actively supported the development of this database. Members of the Division continue to be represented on a number of committees associated with the ongoing improvement of QUID. The Division and the BCI have also trialed an exchange of intelligence analysts as a means of improving the understanding of each area's operations and enhancing inter-agency co-operation. The first of these exchanges occurred in early 1994 for five months and, given its success, it is intended to repeat the exercise in the future.

The Division continues to conduct audits of the Counter-Terrorist Section (CTS). The formal requirement is that such audits be conducted annually; however it has been convenient from the Commission and QPS perspectives to conduct them more frequently – so far every six months. The audits examine the intelligence holdings and filing procedures to ensure that the Section is operating within its approved Charter and provide advice, when appropriate. Written audit reports are provided to a Control Committee, consisting of the Chairperson of the CJC, the Commissioner of Police, the Assistant Commissioner State Crime Operations Command, the Director, Intelligence Division and the Superintendent of the BCI. This Committee meets on a regular basis and is responsible for monitoring and reviewing the Section's operations.

The activities of the CTS, particularly in relation to the information it retains, were of particular interest to the previous PCJC, primarily due to the attention drawn to this function by the activities of the CTS's predecessor, the former Special Branch, whose activities were highlighted by the Fitzgerald Inquiry and resulted in a degree of public concern. It is acknowledged that some public concern remains and, with this in mind, the Commission continues to pay particular attention to its oversight responsibilities in this area. This matter is addressed further in the section of this submission addressing the recommendations of Report No. 18, in particular Recommendation No. 4 (see Chapter 10).

The provision of suitable training for intelligence officers has been an area to which the Division has paid particular attention. Following the development of the Commission's own intelligence training course, the Division facilitated the merger of

this course with that of the BCI. By working conjointly the Division and the BCI have continued to improve intelligence training to a level which is now comparable with any other intelligence training conducted within Australia. Full-time Intelligence Analyst Training Courses are run approximately every six months with the Commission and the Bureau providing full-time instructors. Whilst the majority of students are, out of necessity, members of the QPS, other agencies are invited to attend most courses.

Officers who graduate from these courses utilise their training in support of the QPIN as intelligence officers attached to operational areas of the QPS at District, Regional and Headquarters levels. While this is the prime objective in conducting such courses, an equally important consequence of this training is a gradual enhancement of the QPS's level of skill and expertise in the area of intelligence. This not only occurs within the QPIN but also within the QPS as a whole as trained intelligence officers filter back into other areas of police work following their promotion or routine transfer. The awareness and recognition of the importance of intelligence support within the QPS will continue to be enhanced through the gradual increase and availability of professionally trained intelligence officers.

ISSUES

THE NEED FOR INTELLIGENCE

Fitzgerald discussed the need for an intelligence function within the Commission at pages 317 to 318 of his report. A number of Royal Commissions into organised criminal activity within Australia have made observations in respect of various impediments which often frustrate full co-operation in law enforcement endeavours. Without exception, these Commissions have made similar observations to those of Fitzgerald regarding the vital importance of correct information processing and effective criminal intelligence in combating organised crime and major crime.

As early as August 1974, the Honourable Mr Justice Moffitt recommended a frank and drastic review of the methods of investigation of organised crime and identified the need for a central and co-operative intelligence service.[5] In discussing inter-agency co-operation and the need for intelligence in a subsequent Royal Commission Report into Drug Trafficking in 1979, the Honourable Mr Justice Woodward highlighted how successful targeting and investigation of organised crime activities

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5 *Report of The Royal Commission of Inquiry in Respect of Certain Matters Relating to Allegations of Organised Crime in Clubs* 1974, New South Wales Government, pp. 136-137.

would be dependent on the existence of 'an effective intelligence system concerning organised crime'.[6] Woodward, in confirming the need for a task force concept as a co-operative operational effort against the sophistication of organised crime, stressed the importance of a matching intelligence structure designed to collect, analyse and disseminate intelligence.[7] Similar observations were again made by Frank Costigan QC, when discussing the need for analysis of criminal activities, in the *Report on the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union* in 1984.[8]

It is recognised today that good information drives the whole process. However intelligence systems and databases that contain intelligence information in a readily retrievable and useful format are not constructed overnight. In the Commission's case, new foundations had to be laid. These are now in place and the Commission's information and knowledge base in respect of organised crime has expanded considerably in the past three years. It is still growing, and plans are in place to guide its growth. These plans are referred to as Intelligence Collection Plans. They are based on the recognition that there are information gaps in knowledge of certain activities and that a proactive effort is required to fill these gaps. The Commission was one of the first law enforcement agencies in Australia to adopt this approach, and to drive investigations through long term proactive collection plans. A review of the Commission's organised crime program in 1992 by a former head of the FBI's Drug and Organised Crime Program concluded that:

> The Criminal Justice Commission Organised Crime Investigative and Data Collection (Intelligence) Programs are very well directed and thought out. I am particularly impressed with your data collection plans and the awareness by the investigators that to be successful, the battle plans must be proactive and geared for the long haul.

Whilst continuing with its own operations in Queensland, the Commission now also participates in several national efforts against organised crime which are using a similar approach.[9]

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6 October 1979, Vol. 3, New South Wales Government, pp. 1634-1635.

7 Ibid., p. 1625.

8 Vol. 2, Victorian Government, pp. 118-128.

9 Similar strategies are discussed and endorsed, as the most appropriate way of tackling the problem of organised crime, in the *Report of the Review of Commonwealth Law Enforcement Arrangements, 1994*, pp. 152-155.

Organised crime cannot be successfully attacked by any one agency acting alone. It is well recognised that success will only be achieved by agencies working together. The attack on organised crime will never be easy, and the very nature of the activity means that obstacles will often be placed in the path of investigators. By using proactive strategies, with longer term objectives, the Commission has taken a forward looking approach which examines how Queensland fits into the bigger picture.

In 1990 and 1991 the Intelligence Division embarked on examining areas of organised crime that were not visible within Queensland yet there was an identified potential for such activity. The limited resources of the Intelligence Division did not allow these initial assessments to progress further without assistance in the collection of data. Additional resources of an MDT were allocated to this important area of work and resulted in the formation of the Commission's Organised Crime team. In the early stages, as no problem was visible, the QPS was reluctant to assist with resources due to other more visible and pressing priorities. This view, however, changed at the end of 1992 and today the proactive endeavours are being continued by the JOCTF.

The earlier assumptions that these areas of organised crime may be present in Queensland have proven to be correct. The Intelligence Division continues to provide a number of Intelligence Analysts in support of the JOCTF investigations. As the Commission's work in this area continues in conjunction with other law enforcement agencies, a better understanding of organised crime in Queensland is developing. It is important to note, however, that the examination, investigation and control of organised crime requires a long term commitment and specialised resources if it is to be successful. These specialised resources, together with the long term commitment, currently exist within the Commission.

Organised crime is sophisticated and, accordingly, combating it requires a sophisticated approach. Traditional police work is by its very nature reactive. The 1994 *Review of Commonwealth Law Enforcement Arrangements* highlights the problem of tackling organised crime using traditional police methods and quotes the Chairperson of the NCA as follows:

> Most police investigations are complaint driven and resource limitations place pressure for early results. This is an ineffective way to attack sophisticated organised crime and often results in the arrest of minions (eg drug busts) because the real players keep their distance from the primary criminal activity. The major players can often only be convicted of offences quite minor compared with the extent of their criminality. Often it will require painstaking financial analysis to connect them to criminal activity.
>
> Sometimes operational opportunities will present themselves in the course of any investigation and where appropriate they should be exploited. In other cases the

> operational opportunity may need to be deferred if there is a reasonable prospect of getting bigger players. The multi-disciplinary approach remains important in investigating organised crime because all relevant skills have to be brought to bear. The traditional policing skills remain important and one of the benefits of the co-operative approach is that agencies can complement one another where they have different skill mixes. (pp.96-97)

Organised crime requires a proactive approach. It is seldom reported and often remains hidden from view. The strategies to attack organised crime require the use of a package of tools. Such tools include multi-disciplinary teams, proactive intelligence and dedicated collection plans, coercive powers, witness protection and electronic surveillance. These functions all interact to provide the formula for success. Somewhat like a recipe, if you remove one of the ingredients you do not get the desired result. The Intelligence Division contributes to this package by placing emphasis on the overall strategic analysis of organised crime and the groups involved whilst at the same time providing assistance to the Commission's investigations. This overall analysis concentrates on the organisational structure, characteristics and methods of operation of the criminal groups not only to understand the potential threat posed by such groups, but also to identify the vulnerabilities of such groups in order that appropriate targeting strategies may be developed.

IMPACT OF FREEDOM OF INFORMATION LEGISLATION

As indicated above, the Commission has developed a database of intelligence information concerning criminal activities and persons concerned in criminal activities. This is by virtue of s. 58(2)(a) of the Act. As also indicated above, s. 58(2)(c) of the Act requires the Commission to secure the Database and limit access to persons who can demonstrate a legitimate need. The manner in which the Commission has complied with this legislative obligation has been discussed in the Security section of this Chapter where reference is made to the stringent measures adopted.

Consistent with the Commission's attitude that it be accountable, it supported the *Freedom of Information Act 1992* (the FOI Act) and the application of the legislation to the Commission, including the Intelligence Division. As a result, the Commission cannot presently claim any exemption which is not available to any other State agency, in relation to the Database.

One basis for exemption on which the Commission has relied in respect of the Database has been s. 48 of the FOI Act. That section provides a ground for exemption from access where there is a secrecy provision applicable to the matter that is the subject of the request.

The *Freedom of Information (Review of Secrecy Provisions Exemptions) Amendment Bill 1994* amends s. 48 of the FOI Act. The current s. 48 ceases to have effect on 18 August 1994. The Bill is based on the recommendations of the Queensland Law Reform Commission in Report No. 46 on *The Freedom of Information Act 1992 – Review of Secrecy Provision Exemption* (Q.L.R.C. 46).

The Commission has interpreted s. 58(2)(c) as a 'secrecy provision' within the terms of s. 48 of the FOI Act and has therefore relied upon this as a basis for exemption from disclosure in respect of a number of applications made under the FOI Act.

After 18 August 1994, only specific 'secrecy provisions' mentioned in the schedule to the Bill will provide the basis of a claim for exemption, although other exemptions may be available under the FOI Act.

In Q.L.R.C.R 46, the Law Reform Commission concluded that s. 58(2)(c) of the Act was not a secrecy provision within s. 48 (see pp. 64-65 and Appendix C at p. 128). As a result of this conclusion, Q.L.R.C.R. 46 has not recommended s. 58(2)(c) of the Act for inclusion in the proposed schedule.

Accordingly, it will no longer be possible for the Commission to rely on s. 48 of the FOI Act as a basis for refusal to grant access to material which is stored in the Database.

The Commission is concerned that there will be situations where information contained in the Database cannot be properly withheld from disclosure sought pursuant to the FOI Act, because in the absence of the application of s. 48, there will be no exemption available to it.

For that reason, the Commission strongly urges that the Database be specifically excluded from the operation of the FOI Act, by virtue of a regulation made pursuant to s. 11(1)(q) of the FOI Act. Section 11(1)(q) provides:

> (1) This Act does not apply to -
>
> . . .
>
> (q) an agency, part of an agency or function of an agency prescribed by regulation for the purposes of this paragraph ...

The probable detrimental effects of the continued applicability of the FOI Act to the Database are:

A. *Queensland law enforcement activities against organised crime would be severely hampered*

1. The Intelligence Division, by virtue of s. 58(1) of the Act, has the role and function of a criminal intelligence unit central to Queensland law enforcement efforts against major crime, including organised crime.

2. Organised crime is a multi-jurisdictional phenomenon and to deal with it effectively in Queensland requires a free flow of intelligence information concerning those activities in other jurisdictions.

   This is emphasised by s. 58(2)(a), which requires the Intelligence Division to build up the Database by using information acquired by it from, inter alia:

   . . .

   (iii) the Police Service;

   (iv) sources of the Commonwealth or any State or Territory, which supplies such information to it;

   (v) any other source available to it;

   . . .

3. Accordingly, as has been indicated, the Commission has expended substantial effort and resources in painstakingly building a network of contacts and co-operation from which this information was drawn. The linchpin of this network and co-operation is the Commission being perceived as being willing and able to protect the confidentiality of information provided.

4. The information received by the Commission invariably emanates from high level law enforcement agency sources and is given on a strictly confidential basis. Often, such information emanates from a jurisdiction which has either no freedom of information legislation, or from an agency which is itself exempt from such legislation.

5. The nature of intelligence information is usually such that it may be held confidentially for long periods of time before its worth becomes apparent. This is because the value of intelligence information which is received remains uncertain until it is able to be subjected to detailed intelligence analysis or collation with other superficially unrelated information. Such analysis or collation often depends on receipt of information from disparate sources.

6. Prior to collation or analysis, such information may not relate to any current or anticipated investigation or deliberative process being undertaken in relation to the functions of government. In such cases the exemptions provided by ss. 41 and 42 of the FOI Act will not be available to the Commission in respect of the Database.

Accordingly, in the absence of being able to rely on s. 48 as a basis of exemption, there is a real probability that sensitive intelligence information will be released with the result that:

- future sources of such information (especially from other intelligence and law enforcement agencies) will dry up as the Commission will be perceived as being unable or unwilling to maintain the confidentiality of its intelligence information

- organised criminals will be alerted to the fact that their activities are under examination and will be able to conceal or change the focus of those activities so that the information is never able to be the subject of intelligence analysis or collation

Either eventuality would endanger the valuable co-operation and trust between law enforcement agencies which is so important to the fight against organised crime. As a result, Queensland law enforcement efforts against organised crime would be severely hampered.

B. *Unfairness may result to a considerable number of people.*

1. Intelligence information, if released under the FOI Act, has great potential to be used as a basis for public vilification of persons on the basis of supposition concerning the persons to whom the information refers. There is a real risk that such persons would be subjected to trial by media and denied natural justice. This is particularly so when, as indicated, intelligence is based on unconfirmed information

which covers the spectrum of minor allegations, innuendo or rumour to information that is all but confirmed as accurate.

2. This is to be contrasted with the situation where the information is retained as confidential intelligence information. As such, it is subject to analysis or collation which remains confidential and has no adverse effect upon any person to whom it refers.

In limiting access to the Database, the legislature has clearly indicated by s. 58(2)(c) an intention not to authorise general public disclosure of this information.

This is supported by the unanimous opinion of the current Committee in its *Report of a Review of the CJC's use of its power under section 3.1 of the Criminal Justice Act 1989: Part B – Report, Conclusions and Recommendations* (Report No. 20, Part B] at p. 65, paragraph 5.11, with reference to s. 2.47(2)(c) of the Act, which has subsequently been renumbered as s. 58(2)(c):

> dissemination of such material must be kept to a minimum and only to those if "they have a legitimate need for access to the same" within the meaning of s. 2.47(2)(c).

This report was tabled on 23 September 1993.

Notably, the former Chairman of the ICAC, Mr Ian Temby QC, has expressed similar views when discussing the need to maintain the confidentiality of that agency's intelligence information. Reference is made to p. 40 of the Committee's *Review of the Criminal Justice Commission's use of its powers under section 3.1 of the Criminal Justice Act 1989: Part A - Submissions and Minutes of Evidence taken on 30 April 1993* (Report No. 20) tabled on 12 May 1993.

The Commission notes that the following agencies are, by virtue of the *Freedom of Information Regulation 1992* prescribed for the purposes of s. 11(1)(q) of the Act:

- the Australian Financial Institutions Commission established under the *Australian Financial Institutions Commission Act 1992*;
- a parents and citizens association formed under the *Education (General Provisions) Act 1989*;
- a public grammar school to which the *Grammar Schools Act 1975* applies.

The Commission submits, that if it is considered appropriate for these entities to be exempted from the operation of the FOI Act, for the reasons discussed above, the

functions of the Commission's Intelligence Division as it relates to the Database, should also be prescribed for the purposes of s. 11(1)(q) of the FOI Act.

Because of the impending amendment of the FOI Act, the Commission has requested the Minister for Justice and Attorney-General to give urgent attention to this proposal for inclusion of this function of the Intelligence Division in a regulation made pursuant to s. 11(1)(q) of the FOI Act. It also seeks the Committee's support for this proposal.

MYTHS AND MISCONCEPTIONS

As discussed in Chapter 2, from time to time certain misconceptions arise which are not of the Commission's making. The Intelligence Division has not been immune in this respect. Two such myths continue to surface and this submission provides an opportunity to place the situation in its true perspective, based on fact rather than on inaccuracies that often take on a life of their own.

THE COMMISSION ACTS LIKE A "BIG BROTHER"

Traditionally the intelligence function has operated "behind the scenes" in support of the more visible aspects of investigation. For this reason, it is not widely understood by the broader community. In fact, to some, the intelligence function still has a somewhat sinister connotation and is seen as "big brother" prying into their private lives. Such beliefs may be difficult to change given the continuing media interest in, and on occasion sensational coverage of, the activities of some intelligence agencies. However, the Commission, as with most modern law enforcement agencies, has recognised that intelligence is an essential part of any law enforcement operation, not only in support of the investigative function, but also in providing a vital contribution to the decision making process.[10]

Intelligence is the product resulting from the collection, evaluation, integration and interpretation of all available information. Intelligence is a proactive method of identifying criminal activity and the organisations and individuals involved. Intelligence can be used to commence an operation against a particular target, in support of an operation, or simply to aid in decision making by providing advice in respect of trends, patterns and potential threats. In this latter area, intelligence assists

[10] See for example p. 151 of the *Report of the Review of Commonwealth Law Enforcement Arrangements*, February 1994.

in determining the most suitable and efficient use of resources and can also aid in the development of policy and strategies. Essentially the intelligence function provides a law enforcement agency with a support system which legitimately meets the agency's needs in carrying out its efforts to protect the public through both the detection of criminal activity and prevention of future criminal activity.

By its very nature, intelligence is based on unconfirmed information. Its value therefore varies considerably, from mere allegations, innuendo or rumour to information that is all but confirmed as accurate. Whatever the reliability of the information, there is always a need for work to be done to establish its true worth. As that is done, the information is either proven incorrect and disposed of or the probability of its truthfulness is steadily increased as corroboration from independent sources is obtained. To obtain that corroboration, it is necessary to have a close and trusting relationship with other law enforcement agencies and confidential sources. That trust is based on the belief that the Commission will protect the information and identities of sources from unlawful access.

The increasing sophistication of criminal activities, in particular those related to organised crime, frequently requires law enforcement agencies to access vast quantities of data to enable them to prevent, detect, and counter such activities. In respect of the Commission's functions, Fitzgerald observed that the Intelligence Division ' . . . must have unqualified access to the whole gamut of intelligence sources of all sorts, including those of the Queensland Police and from interstate and Commonwealth sources' (p. 317). Whilst such access is justifiable, there is an equally pressing demand for such information to be adequately protected against unauthorised disclosure or misuse.

It is also important to note that intelligence is not proof. It is not evidence and, as such, intelligence material always carries a caveat in this respect. To make intelligence material public would be irresponsible, not only from the point of view of jeopardising law enforcement operations but also from the point of view of being unfair to any organisation or individual subject to the unconfirmed intelligence. The consequences of intelligence material becoming public could be described as

- being unfair to individuals who are the subject of that material
- endangering the identity and safety of confidential sources
- endangering the valuable co-operation and trust between law enforcement agencies which is so important in the fight against organised crime
- alerting criminals to the fact that their activities are under examination.

To ensure that intelligence material is properly managed, the Commission has stringent guidelines in place to ensure that information is only gathered and stored in respect of criminal activity and the organisations or persons engaged in criminal activity. These guidelines also incorporate the same provisions as the Federal Privacy legislation and related privacy principles to ensure that individual rights are protected. The guidelines provide the necessary checks and balances to ensure that proper procedures are adhered to. Such checks and balances include regular audits and oversight by the Committee. The QPS has also adopted similar guidelines in respect of criminal intelligence.

The Fitzgerald Inquiry placed the police intelligence function in Queensland under considerable scrutiny and raised a number of concerns over the use of information. Whilst the Commission recognises that public concerns about this function will never be totally removed, it has taken steps to allay these fears. These steps include the continued oversight of the QPS intelligence function as provided for in the Act as well as proactive measures to make the public more generally aware of the procedures and guidelines under which the intelligence function operates. In this way the Commission has attempted to demonstrate that intelligence is a profession that is not only responsible and accountable, but also one that operates under the highest standards of integrity in ensuring procedures comply with the ethical standards expected by the community.

The first PCJC, in indicating its support of the Commission's intelligence function, expressed a view that future Committees should review and carefully monitor this aspect of the Commission's work.[11] The Commission believes the current Committee has carried out these functions through its regular monthly reviews of the Commission's operations. The Commission is confident that its current intelligence material are appropriate and properly focussed, and would encourage the Committee to continue its close monitoring to ensure the Division remains accountable.

THE COMMISSION'S INTELLIGENCE FUNCTION DUPLICATES THAT OF THE QPS

The second myth that arises from time to time is the view, albeit a minority one, that the roles of the Commission's Intelligence Division and the QPS intelligence function involve a duplication of resources. The Commission submits that there is no foundation in this belief. The reality is that the two functions are complementary to each other in several areas.

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[11] Parliamentary Criminal Justice Committee Report No. 18., *Review of the Operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission* August 1992, p. 10.

The QPS intelligence function exists to support the operational needs of the QPS, while the Intelligence Division has distinct statutory obligations under the *Criminal Justice Act 1989*. These obligations are specific to organised crime and major crime, including criminal activity transcending the normal boundaries of criminal activity that is the subject of local police action. In addition, they include the oversight of the BCI, which has overall co-ordinating responsibility for the QPS intelligence function as a whole.

Leaving aside the Commission's role in the oversight of the BCI, which is discussed earlier in this Chapter, the misconception regarding duplication would appear to centre on the intelligence gathering and operational roles of the two areas.

As mentioned the BCI and the related QPS intelligence network necessarily concentrate their resources on the day to day police intelligence needs in support of operational police work. The police intelligence database, QUID, which is a vast improvement on the information systems available four years ago, is an operational database quite correctly containing intelligence data which is predominantly of a tactical nature. QUID is accessible to operational police officers at street level through designated intelligence officers and a number of successes have been attributed to the timely use of data within the database.

In contrast, the Intelligence Division has concentrated its resources and analytical expertise in building a database of refined intelligence on organised criminal activity in support of the Commission's strategic approach to organised crime and major crime including criminal activity that transcends the normal boundaries of criminal activity that is the subject of local police action in Queensland. This Database has been built up, as Fitzgerald perceived, with information collected from a variety of sources in order to rectify the virtual desert that existed in 1990 in regard to these activities. The Database is discussed in more detail earlier in this Chapter, as are the co-operative arrangements and procedures by which access is provided to the Commission's intelligence data.

As can be seen the Commission's strategies are based on research, dedicated data capture and proactive collection plans confined to specific areas of sophisticated and organised criminal activity. The strategies are long term and strategically based, whilst the BCI's strategies are more tactically oriented in support of the operational demands of the QPS. This does not suggest that one is superior to the other, but merely describes different approaches. As discussed on page 93, police investigations are invariably complaint driven and resource limitations increase the pressure on delivering early results. By necessity therefore the QPS intelligence function endeavours to facilitate early results. The Commission on the other hand is able to

take a step back from the pressures of every day police work and approach its statutory obligations from a strategic and longer term perspective.

There is a recognised potential for some overlap in terms of the operational targets. However, several strategies are in place to ensure this possibility is reduced to an absolute minimum. The Commission is represented on the QPS operational target committee, which enables close liaison in respect of each agency's operations. The Division also maintains close contact with the BCI on operational matters, and regular monthly meetings are held between all law enforcement agencies within Queensland to minimise any overlap of investigations. Additionally the majority of tactical intelligence work conducted by the Commission is in support of the JOCTF, which is jointly managed by senior members of the Commission and the QPS.

In recommending the formation of the Commission's intelligence function, Fitzgerald commented (p. 317) that the success of his recommendation would

> depend upon the close and sensitive development of co-operative procedures and liaison between the CJC and the new leadership of the Police Force [and acceptance of] the importance and worth of an integrated cross-checked and balanced approach to information collection and analysis and the assessing and use of criminal intelligence.

Although there was some friction in these areas in the initial stages, the Commission submits that in the past two years the necessary co-operative procedures, liaison and acceptance of an integrated cross-checked and balanced approach have occurred.

FUTURE DIRECTIONS

The Division has progressively developed during the past four years to a stage where it is proving to be a highly effective intelligence unit. Using the Database and adopting a proactive approach, the Division is able to provide tactical intelligence support to both CJC and JOCTF operations and strategic intelligence advice to the Commission, the Government and the law enforcement community.

The future directions of the Division are to a great degree dictated by its obligations under the Act and the Commission's strategy regarding the investigation of organised crime and major crime including criminal activity transcending the normal boundaries of criminal activity that are subject to local police action. These strategies are now well focussed, and in respect of organised crime are guided by dedicated collection plans. Essentially the future activities of the Division will centre on consolidating and progressing the work already outlined in this chapter.

OPERATIONAL INTELLIGENCE SUPPORT

From the operational perspective, the Division will continue with the development of the Database and the management of intelligence data to ensure the maintenance of its integrity and its correct use. The Database has expanded considerably in the past three years and will continue to do so as the Commission pursues its strategies in respect of organised criminal activity through the activities of its MDTs and the JOCTF. The Division will continue to support these investigations through the:

- provision of a dedicated information retrieval service
- provision of Intelligence Analysts as an integral part of the multi-disciplinary approach
- monitoring and continuing to assess the activities of identified organised crime groups
- identification of organised crime group vulnerabilities and preparation of profiles and reports to assist in the selection of appropriate targets.

The Division will also continue to foster close relations with other law enforcement agencies and contribute to the overall national picture through co-operation, liaison and mutual assistance. Specific to Queensland the Division will maintain close liaison with the QPS and other law enforcement agencies to assist in minimising the potential for any overlap in investigations.

The continuing analysis of the Commission's intelligence holdings will enhance the Commission's understanding of organised criminal activity within Queensland.

OVERSIGHT RESPONSIBILITIES

The Commission is committed to ensuring that the intelligence function remains accountable. In view of the identified public concerns regarding the use of the intelligence function, the Division will continue to oversee the BCI's performance of its role to ensure the correct use of intelligence and provide assistance where required in respect of the development of the QPS intelligence function and QUID. This will include regular audits of the CTS and continued representation on the CTS Target Committee.

At the same time, the Division will ensure it remains accountable to the Committee in terms of its own operations and use of data. Its guidelines and audit trails, in

respect of the collection, storage, use and dissemination of intelligence material, will remain available for inspection by the Committee.

GENERAL

As part of the ongoing development of the Commission's strategies, the Division will continue to contribute to the identification of new strategies for the investigation of organised crime by:

- developing further the pool of expertise which is so vital in keeping abreast of the developing sophistication of organised crime

- identifying emerging crime groups by monitoring developments in other parts of Australia and overseas and assessing the potential impact that such groups may have on Queensland in the future

- working closely with other intelligence agencies and the BCI in maintaining a high standard of intelligence training and where appropriate contribute to national intelligence training initiatives.

By monitoring client feedback the Division will consolidate and refine its policies and procedures to maintain the quality of its service.

Through example the Division will continue to demonstrate that intelligence is not only an important and necessary function of modern law enforcement, but that it is also a responsible and accountable function that practises high standards of integrity and ethics.

CHAPTER 4 – WITNESS PROTECTION DIVISION

BACKGROUND

The need to protect persons who provide information and evidence to law enforcement authorities is a recent international phenomenon associated with the emergence of those members of society who plan and commit crime as a business, for profit (organised crime – by any definition), together with the increasing incidence of organised and major crime.

The significant financial power and influence generated by organised crime is clearly capable of purchasing the silence, by one means or another, of those who might seek to stand in its way. In Australia in recent years, indeed, there have been many instances where people have been corrupted, or frightened, or harmed in order to prevent them from providing information or evidence.

Witness protection came into existence in Queensland during the Fitzgerald Commission of Inquiry, when it became necessary to protect several significant witnesses who were able to give direct evidence of crime and corruption. As a result, a Witness Protection Unit, with staff who had very limited training and experience for this function at that time, was formed specifically to service the requirements of the Fitzgerald Inquiry. Prior to the Fitzgerald Inquiry, Queensland, like most other Australian States and Territories, had no formalised witness protection program, nor was there any legislation in place.

The Fitzgerald Report identified the need for a witness protection program to assist in combating organised crime and corruption in Queensland stating that '[a] professional witness protection unit is an essential component of a progressive criminal justice system' (p. 318).

At page 375 Fitzgerald recommended that 'the Witness Protection Division be established within the CJC'.

In accordance with that recommendation the Witness Protection Division was established within the Commission on 4 November 1989 as a separate organisational unit directly responsible for providing protection of the personal safety of persons who, in the opinion of the Chairperson following consultation with the Director of the Witness Protection Division, are in need of it (s. 62(1) of the Act). The legislation necessary to establish such a unit is contained in Division 10 of Part 2 of the Act.

A person's eligibility to enter the program is set out in s. 61 and 62(1) and (2)(a) of the Act.

This section does not limit the provision of protection to persons who have, or may give evidence to the Commission or a court. It includes persons who have *assisted* the Commission or any *law enforcement agency of the State* in the discharge of its functions and responsibilities. It is also important to note that the legislation does not specify the nature or extent of the assistance and allows for a very broad interpretation.

The roles and functions of the Division are contained in s. 62, which establishes the Division as the unit *directly responsible* for witness protection:

> **62.(1)** The Witness Protection Division is the unit within the Commission directly responsible for providing witness protection to persons who, in the opinion of the chairperson, following consultation with the director of the Division, are in need of it.
>
> (2) It is the function of the division -
>
> (a) to provide witness protection through officers of the division to persons who are considered, as prescribed by subsection (1), to be in need of it by reason that they have assisted the Commission or a law enforcement agency of the State in the discharge of its functions and responsibilities;
>
> (b) to provide, to persons receiving witness protection, facilities and means by which they may assume new identities and may be relocated and re-established in employment or business, if in the opinion of the chairperson, such facilities or means are necessary;
>
> (c) to devise methods by which witness protection may be provided adequately to persons generally or in particular cases;
>
> (d) to devise programs of training, and to train personnel, whether officers of the division or not, for the duties involved in providing witness protection;
>
> (e) to accurately maintain a register of the factual particulars and the assumed particulars of persons who have assumed new identities for the purpose of witness protection provided to them;
>
> (f) to advise the Minister and the Commission in relation to arrangements with authorities of the Commonwealth and the other

States and the Territories, with a view to the establishment and operation of a national witness protection program.

(3) Witness protection provided to any person shall be terminated, if that person so requests.

These functions are wide ranging and complex and make witness protection both labour and resource intensive where problem solving on a daily basis is the norm rather than the exception. Because witness protection directly concerns life and safety on a 24 hour basis, seven days a week, the duties of the officers of the Division place extraordinary psychological demands on both the protectors and the protected.

STRUCTURE

The Witness Protection Division is an autonomous unit within the Commission. The Division operates from within the Criminal Justice Commission building which also contains a fully self contained secure witness accommodation. It is answerable, through the Director of the Division, to the Chairperson of the CJC. Major decisions of the Division are made by a Committee consisting of the Director of the Witness Protection Division (Chairperson), the Director of the OMD, the Executive Director and the Inspector in charge of the Witness Protection Division. All Committee decisions must be ratified by the Chairperson.

The Division is headed by a Director who is also the Director of Operations and an Assistant Commissioner of Police. The Officer in Charge of the Division, an Inspector of Police, is responsible for the overall operation of the Division and is directly responsible to the Director.

The Witness Protection Committee assesses all applicants for Witness Protection.

The Division consists of six persons in the Directorate, 21 police personnel and two support officers:

- Operations Co-ordinator (Senior Sergeant) responsible for the conduct of ongoing Witness Protection operations.

- Administration Officer (Sergeant) responsible for all administrative functions within the Division.

- Intelligence and Research Officer (Sergeant) responsible for the preparation, research, organisation, conduct or co-ordination of the relocation of witnesses and for arrangements for new identities.

- Firearms Training Officer (Sergeant) responsible for the ongoing firearms training of Commission staff and in particular Witness Protection staff.

The remainder of the Witness Protection staff is organised into three teams consisting of:

- a Team Leader (Sergeant)

- four or five team members (Senior Constables and Constables).

Each Team within the Division is assigned a number of Witness Protection operations which are the responsibility of the Team Leader.

The Communications Room forms an integral part not only of the Division but also of the Commission as a whole. It:

- operates 24 hours a day, 7 days a week

- is staffed by team members from the Witness Protection Division

- provides a means by which witnesses may contact the Division at any time of day or night

- enables Witness Protection staff to be called out at any time if required

- serves as a reception point for calls from the public, including after hours complaints to OMD

- serves as a means of contacting officers of the Commission at all times.

ACHIEVEMENTS

WORKLOAD

From its inception to 4 November 1989 the Division:

- conducted threat assessments into 68 operations involving 146 people
- provided protection to 124 people from 48 operations.

These assessments were conducted over two years from October 1987 to November 1989.

Of the 68 operations:

- 66 originated from the Fitzgerald Inquiry
- two were referred to the Fitzgerald Inquiry by the QPS.

On 4 November 1989, of these 68 operations, 44 were still current and were taken over by the Witness Protection Division. These operations involved 117 people.

The following tables set out the workload performed by the Division since it commenced in November 1989 (not including witnesses referred to it from the Fitzgerald Inquiry).

TABLE 4.1: OPERATIONS REFERRED TO THE WITNESS PROTECTION DIVISION FOR THREAT ASSESSMENT (1989-94)

Source	89/90	90/91	91/92	92/93	93/94	Total
ASC			1			1
CJC	5	15	11	10	18	59
CSC		1		1		2
Dept of Health			1			1
Legal Aid		1				1
NSW/WITSEC		1	1	5		7
OSP	1		2			3
Politician					1	1
Public			1			1
QPS	8	20	16	19	19	82
QPS/CJC			3	2	1	6
QPS/NCA					3	3
VIC/WITSEC	1		1			2
WA/QPS				1		1
Total	15	38	37	38	42	170

Note: The abbreviations used are:
ASC: Australian Securities Commission
CJC: Criminal Justice Commission
CSC: Corrective Services Commission
NSW/WITSEC: NSW Witness Security Unit
OSP: Office of the Special Prosecutor
QPS: Queensland Police Service
NCA: National Crime Authority
VIC/WITSEC: VIC Witness Security Unit
WA: West Australian Police

TABLE 4.2: PERSONS REFERRED TO THE WITNESS PROTECTION DIVISION FOR ASSESSMENT (1989-94)

Source	89/90	90/91	91/92	92/93	93/94	Total
ASC			5			5
CJC	14	35	27	22	38	136
CSC		1		1		2
Dept of Health			2			2
Legal aid		2				2
NSW/WITSEC		1	1	7		9
OSP	4		5			9
Politician					1	1
Public			1			1
QPS	20	36	33	42	57	188
QPS/CJC			11	5	6	22
QPS/NCA					9	9
VIC/WITSEC	1		1			2
WA/QPS				2		2
Total	39	75	86	79	111	390

Note: These figures relate directly to the operations set out in Table 4.1.

TABLE 4.3: PERSONS ACCEPTING OR REJECTING AN OFFER OF WITNESS PROTECTION (1989-94)

Source	89/90		90/91		91/92		92/93		93/94		Total	
	A	R	A	R	A	R	A	R	A	R	A	R
ASC					5						5	
CJC	10	4	13	22	11	16	19	3	28	10	81	55
CSC			1				1				2	
Dept of Health						2						2
Legal Aid				2								2
NSW/ WITSEC				1	1		7				8	1
OSP		4			5						5	4
Politician										1		1
Public						1						1
QPS	16	4	21	15	25	8	33	9	39	18	134	54
QPS/CJC					11		5			6	16	6
QPS/NCA									9		9	
VIC/ WITSEC	1				1						2	
WA/QPS							2				2	
Total	27	12	35	40	59	27	67	12	76	35	264	126

Note: This table shows the number of persons who, from 4 November 1989 to 30 June 1994:

- (A) accepted and entered the program.
- (R) rejected an offer for protection.

From 4 November 1989 to 30 June 1994, 170 operations involving 390 individuals were referred to the Witness Protection Division for threat assessments.

Although threat assessments were conducted in each case not all were subsequently accepted to the Witness Protection Program:

- 264 people from 117 operations accepted an Offer of Witness Protection and were provided with some form of protection by the Division

- Including the operations transferred from the Fitzgerald Inquiry the Division provided protection to a total of 381 people in 161 operations.

As at 30 June 1994 the Division is providing protection to 104 people (Table 4.4) in 42 operations (Table 4.5).

TABLE 4.4: PERSONS CURRENTLY ON THE WITNESS PROTECTION PROGRAM, BY SOURCE AND YEAR OF COMMENCEMENT (1989-94)

Source	1987-3.11.89	4.11.89-30.6.90	90/91	91/92	92/93	93/94	Total
ASC				5			5
CJC				1	10	10	21
COI	22			1			23
CSC					1		1
NSW/WITSEC				1	4		5
OSP				3			3
QPS		4	3		5	24	36
QPS/NCA						9	9
VIC/WITSEC		1					1
Total	22	5	3	11	20	43	104

As can be seen from the above table there are currently 22 witnesses on the program who were first placed on the program during the Fitzgerald Inquiry. These witnesses are the remainder of the 177 witnesses taken over by the Witness Protection Division on 4 November 1989.

The person added in 1991/92 was a child born to one of the witnesses in that year. This situation has occurred in a few other instances and poses difficulties and greater demands on Witness Protection staff in providing the necessary level of protection both during the pre-natal and post-natal stages of the children of witnesses.

TABLE 4.5: CURRENT OPERATIONS, BY SOURCE AND YEAR OF COMMENCEMENT (1987-94)

Source	1987-3.11.89	4.11.89-30.6.90	90/91	91/92	92/93	93/94	Total
ASC				1			1
CJC				1	3	6	10
COI	9						9
CSC					1		1
NSW/WITSEC				1	2		3
OSP				1			1
QPS		1	1		3	8	13
QPS/NCA						3	3
VIC/WITSEC		1					1
Total	9	2	1	4	9	17	42

Note: The figures in this table relate directly to the number of persons shown in Table 4.4.

As can be seen from the above tables the Division has conducted a considerable number of threat assessments and has provided protection for a large number of persons. The data indicate the number of persons initially accepting or rejecting offers

persons. The data indicate the number of persons initially accepting or rejecting offers of protection in the program and the numbers remaining in the program at the end of the reporting period.

Bearing in mind the number of persons who are or who have passed through the program the Division can be very proud of its major achievement in ensuring that no witness, whilst on the program, has come to any harm.

The tables show a steady increase of the numbers of persons placed on the program from year to year. As law enforcement agencies in this State acquire a better understanding of and become more familiar with the Witness Protection Program those numbers are expected to increase.

OTHER INITIATIVES

The Division has established effective liaison with various Federal and State government agencies which provide valuable assistance in many different aspects of the work of the Division. The Division has actively supported and taken every opportunity to participate in the establishment of a National Witness Protection Program.

The Division:

- conducted a major close personal protection operation which lasted six months
- has obtained the services of medical general practitioners and specialists in psychiatry so that the psychological and physical well being of witnesses can be monitored on a regular basis.

The Division also:

- conducted a VIP/Witness Protection course jointly with the QPS
- is completing the development of a computerised recording system to allow quicker access to records.

The Division is now fully staffed including a number of female officers.

Divisional staff have been or are being trained in:

- personal protection and danger identification skills

- specialised driving skills and specialised use of firearms.

Divisional staff attended:

- a Witness Protection Course in Sydney
- the Intelligence Officers' Course and the Criminal Intelligence Analysts' Course at the QPS Academy.

ISSUES

OPERATIONAL PROBLEMS

The Division encounters serious challenges on a daily basis:

- Many persons protected by the Division are hardened criminals who are difficult to manage and at times non compliant but who fear for their safety and lives.
- The combination of a criminal background and fear creates situations and problems which would not be encountered in other law enforcement activities. These problems, which include heroin addiction, family disputes, health and occupational problems, are dealt with by officers of the Division on a daily basis.
- The *Criminal Justice Act 1989* requires the Division:

> to provide, to persons receiving witness protection, facilities and means by which they may assume new identities and may be relocated and re-established in employment or business. [s. 62.(2)(b)]

However, this provision is of limited assistance in effecting a change of identity. This process is difficult and not without some major problems.

SHOULD THE WITNESS PROTECTION PROGRAM BE LOCATED IN THE QPS OR THE CJC?

It is likely that National Witness Protection legislation will be enacted later this year.

It is a statutory function of the Witness Protection Division to advise the Minister with administrative responsibility for the Commission, the Honourable the Minister for Justice and Attorney-General in relation to arrangements with authorities of the Commonwealth and the other States and Territories, with a view to the establishment of a national witness protection program (s. 62(2)(f) of the Act).

Further, the previous Committee in Recommendation 3 of Report No. 18, stated:

> The Committee recommends that every possible step be taken by both the relevant Minister and the CJC to facilitate the establishment of a National Witness Protection Scheme. Such a scheme would involve the full co-operation of both the Queensland Police Service and the Criminal Justice Commission.

As indicated by its 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), the Commission has always taken this obligation seriously and has actively supported the establishment of a National Witness Protection Scheme. As the Commission said in that submission, it:

> . . . opted to refrain from attempts to seek amendments to its legislation, preferring to await the proclamation of the National Witness Protection Program Bill currently before the Commonwealth Parliament. The action has been taken to ensure our proposed amendments "dovetail" with the Commonwealth legislation. (p. 25)

Accordingly, the only legislative amendments which have been recommended to date by the Commission to the witness protection provisions of the Act are of a technical nature with a view to fine-tuning the operation of the existing provisions. These legislative proposals have *not* been implemented.

The Commission's role in the development of the legislation for a National Witness Protection Program (NWPP) is detailed in the discussion of Recommendation 3 in Chapter 10 of this submission. As indicated in that Chapter, the Commission understands that the National Witness Protection Bill 1994 was introduced into the Senate on 23 March 1994. In essence it requires:

- The AFP to assume an expanded National Witness Protection role
- The National arrangements to be underpinned by complementary Federal and State/Territory legislation.

The Commission's response to this Bill is also detailed in relation to Recommendation 3. It is sufficient for the present purposes to observe that the Commission expressed support for the concept of the proposed NWPP, and indicated that it would participate when the legislation is in place. However, it recommended that the NWPP be

independent from a police body. This later proposition has not been accepted by the Senate Committee to which the Bill was referred. It is now expected that the Bill will be debated by the Senate in late August and will come into force later this year.

At page 11 of Report No. 18, the Committee said:

> With the establishment of such a scheme, the Witness Protection Division of the Commission could have some of its responsibilities transferred back to the Queensland Police Service and integrated into National Scheme.

However as the Commission understands the proposed operation of the NWPP, it will not enable the divestiture of these responsibilities. The Commission's understanding is that, notwithstanding the establishment of a NWPP, witness protection will need to continue at State and Territory level in most instances in which the protection of persons arises for consideration. It seems that, in the majority of cases, persons who assist law enforcement, and whom it is decided require some form of protection, generally only need the protection for a short period pending the outcome of a prosecution. The States and Territories have a capacity to service those witness protection needs in the short term.

It is considered that instances when the NWPP will have to be invoked should prove to be rare. As a guide, approximately one or two persons a year might be referred to an NWPP by Queensland, and then only for secure relocation (both interstate and overseas) or short-term close personal protection.

Once the Bill is passed consideration will have to be given to the complementary State legislation required by it. Any such legislation must be enacted within twelve months of the Federal legislation coming into operation. The Commission will consider what should be contained in the complementary State legislation and report to the Committee and the Attorney-General accordingly.

In relation to the transfer of some of the Witness Protection Division's responsibilities back to the QPS, the Commission refers the Committee to the following statements at page 319 of the Fitzgerald Report:

The Witness Protection Division should be separate from the rest of the Police Force . . .

The Witness Protection Division should not be answerable to any police officer, and its police members should be answerable only to their superiors in the Unit.

As a result:

- The Division is established separately from the QPS.

- Its police members are answerable only to the direction and control of the Director of the Division, who in turn is subject to the direction and control of the Chairperson.

- Neither the Director nor the other police members of the Division are subject to the control and direction of the Commissioner of the QPS in the performance of their witness protection function (s. 67 of the Act).

- All significant matters affecting witness protection operations are considered by the Witness Protection Committee.

- The Committee is chaired by the Director of Operations, who is also the Director of the Witness Protection Division (an Assistant Commissioner of the Police Service), and who is assisted by the Director of OMD and the Executive Director.

- All committee decisions must be ratified by the Chairperson.

In 1981, the Report of the *Permanent Sub-committee on Investigations of the Committee on Governmental Affairs, United States Senate on the Witness Security Program* recognised that there were advantages in having the Witness Security Program maintained by a non-law enforcement body. The summary of the report observed that:

> . . . there was logic to putting witness security in the Marshal's Service. Law enforcement officers wanted the protecting and relocating agency to be in the Criminal Justice System but to be as far removed as possible from both investigating agents and prosecutors. That way, the Government could more readily counter the charge that co-operating witnesses were being paid or otherwise unjustifiably compensated in return for their testimony.
>
> It was correct not to give the security function to the FBI, to Federal drug enforcement agents or to any other investigating organisation. A separate entity in the Justice Department was the appropriate Federal component to have the duty (p. 54)

The separation of witness protection programs from a police authority also minimises the possible development of the "Stockholm Syndrome". Although this term relates to the captor/hostage situation, its effect can be extrapolated to the guard/witness situation. The essence of the theory is that the initial objective and impersonal contact between the captor and hostage is replaced by a developing relationship between the parties as time progresses, resulting in one party becoming sympathetic to the other's

view. This in turn manifests itself by one party adopting the other party's point of view and providing every assistance to support it.

Where witnesses are being protected by a police authority, it could be argued that the "Stockholm Syndrome" might affect the veracity of their final evidence offered as they may embrace the cause of the police authority. This is less likely to occur when the program is run by a witness protection body that is removed from a law enforcement agency. In terms of the value as a witness in Court, this reinforces the U.S. Senate Committee's view that witness protection should be administered by an independent body.

The Commission submits that it is not appropriate for its witness protection responsibilities to be transferred back to the QPS when the following matters are considered:

- The CJC being an overviewing agency of the QPS should not be placed in a position where it would need to place its witnesses on a program operated by the QPS bearing in mind that CJC witnesses may well be providing information and/or evidence against members of the QPS. A situation such as this would require that the CJC operate its own Witness Protection Program.

- 22 persons who were placed on the program during the Fitzgerald Commission (between 28 August 1987 and 3 November 1989) are still on the program. There remains a threat to these persons.

- Five witnesses who have provided information against serving Queensland Police officers were accepted into the Witness Protection Program from January 1993 to June 1994. It is inappropriate for any such witnesses to be protected by police officers who are not separate from the rest of the QPS.

- The present arrangements allow the Division to operate within secure premises with access to persons with diverse professional skills including legal officers, financial analysts, intelligence officers, technical officers, surveillance officers and police officers.

- The protection of witnesses is facilitated by the expertise of each of the various classes of persons mentioned to:

    - prepare legal documents

    - provide financial assistance

- monitor the safety and security of safe houses
- provide surveillance of persons considered to be threats to witnesses
- provide research and intelligence into the background of witnesses and threats.

- Present arrangements preclude any suggestion of political interference in the conduct of the Division. Such interference was demonstrated recently in New South Wales when witness protection arrangements for the notorious criminal, Raymond John Denning (deceased), were terminated without stated reasons. The matter was the subject of considerable media attention and investigation by the Ombudsman in NSW.

- Should the responsibility for the protection of witnesses be vested in the QPS, a real tendency may exist to utilise the services of witness protection personnel in other areas of operation within the QPS.

- VIP duties presently being performed by police at Police Headquarters are not consistent with the functions and duties of the Witness Protection Division. Whilst the VIP Squad caters for high profile persons, in most cases on a relatively short term basis, the Witness Protection Division is responsible for the ongoing security, safety and well being of persons who are predominantly of unsavoury character.

- The cost of relocating premises including the armoury, secure accommodation, communications room and other facilities would be an enormous drain on available budgets.

- Witnesses are more likely to assist the QPS and/or the CJC with the knowledge that an independent body is responsible for their protection.

- Police Officers attached the Division are not subject to the control of senior officers within the QPS.

- Report by the (Commonwealth of Australia) Parliamentary Joint Committee on the National Crime Authority – at page 77, paragraph 5.31 – in reviewing the NCA's suggestion for an independent national witness agency stated:

> stress was laid on the fact that many operational police dislike the task of providing protection to accomplice witnesses whom they regard in the same light as any other criminal. Furthermore many witnesses distrust police and

there are sound arguments for not having police guarding witnesses who are giving evidence against corrupt police officers.

Autonomy and independence is vital to the success of the Witness Protection Division. The lives of protected witnesses would be placed at great risk should it be otherwise.

It is important for a Witness Protection Program to be *seen* to be totally independent of investigating and prosecuting authorities. Assigning responsibilities for witness protection to the QPS is not an alternative that should be considered.

FUTURE DIRECTIONS

The Division will continue to liaise with various Government departments, institutions and private sector organisations to seek their assistance in providing the best possible service.

The Division will also continue to support the establishment of the National Witness Protection Scheme.

CHAPTER 5 – RESEARCH & CO-ORDINATION DIVISION

BACKGROUND

The Fitzgerald Report saw as vital 'the establishment of an independent agency to continually address matters relevant to the criminal law' (p. 316). The Report emphasised that:

> The administration of criminal justice involves dealing with deep and peculiar problems which are not addressed by ad hoc responses to issues by individual agencies.
>
> There is a need for continual review of the suitability of criminal law, the exercise of investigative powers, and the effective use of resources. Research is required into the changing nature and incidence of crime, the roles and methods of various agencies and how their efforts are best co-ordinated. (p. 316)

The Report observed that there was very little tradition of independent research into criminal justice matters in Queensland. The Inquiry acknowledged the valuable work of the Queensland Law Reform Commission, but pointed out that:

> . . . Relatively few of the references to the Law Reform Commission have concerned highly sensitive matters relevant to the administration of criminal justice. Such matters have generally been retained in the hands of the bureaucracy or departmentally controlled committees.
>
> . . .
>
> The Commission, moreover, has no expertise or capacity to perform a wider function of assessing what resources are available, at what cost and what social objectives realistically can be obtained with what resources and at what cost, in recommending changes to . . . criminal laws. Such a function is no part of its proper statutory role. (p. 139)

The Report's proposals concerning the role and functions of the Research and Co-ordination Division were largely incorporated into ss. 56 and 57 of the *Criminal Justice Act 1989*.

STRUCTURE

The current establishment of the Division is 19 staff. This includes three staff employed in the Commission's library. Excluding the library, the structure of the Division is:

Director

2 Principal Research Officers

7 Research Officers (two positions vacant as at 30/7)

3 Research Assistants

3 Support Officers

Of the current research staff (i.e. research assistant and above), three have qualifications predominantly in law, five have social science qualifications and two hold joint degrees. One research assistant does not have a tertiary qualification.

The Division's work is project based – hence, internal work arrangements are fairly flexible. However, major projects (such as the review of police powers) are normally headed up by a principal research officer or another senior staff member.

The Act allocates a wide range of statutory functions and responsibilities to the Division. Putting aside responsibilities which have been taken over by other sections of the Commission, these functions fall under four main headings:

- reform of criminal law and criminal justice administration
- criminal justice research
- monitoring/assisting QPS reform process
- co-ordination of criminal justice reform.

In addition, the Division provides advice and assistance to other Divisions within the Commission on research-related matters.

ACHIEVEMENTS

REFORM OF CRIMINAL LAW AND CRIMINAL JUSTICE ADMINISTRATION

The Division has been involved in developing proposals for reform of criminal law and criminal justice administration primarily by virtue of ss. 21(1), and 23(e) and (f) of the Act, which relate to the general functions and responsibilities of the Commission, and ss. 56 (1)(a) and 56 (3)(d), which relate to the specific responsibilities of the Research and Co-ordination Division. To date, the research agenda under this heading has been determined largely by reference to the Review Program proposed by the Fitzgerald Commission of Inquiry. Reports and Issues Papers which have been produced, or are currently being prepared, in carrying out the Review Program are as follows:

May 1990	*Reforms in Laws Relating to Homosexuality – An Information Paper*
November 1990	*SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry – An Issues Paper*
March 1991	*Review of Prostitution-Related Laws in Queensland – An Information and Issues Paper*
March 1991	*The Jury System in Criminal Trials in Queensland – An Issues Paper*
September 1991	*Police Powers in Queensland – An Issues Paper* (prepared jointly by the Office of the Minister for Police and Emergency Services and the Criminal Justice Commission)
September 1991	*Regulating Morality? An Inquiry into Prostitution in Queensland*
November 1992	*Report on SP Bookmaking and Related Criminal Activities in Queensland* (dated August 1991)
May 1993	*Report on a Review of Police Powers in Queensland – Volume I: An Overview*

May 1993	*Report on a Review of Police Powers in Queensland – Volume II: Entry, Search and Seizure*
July 1993	*Cannabis and the Law in Queensland: A Discussion Paper* (produced by the Advisory Committee on Illicit Drugs)
November 1993	*Report on a Review of Police Powers in Queensland – Volume III: Arrest Without Warrant, Demand Name and Address and Move-on Powers*
May 1994	*Report on a Review of Police Powers in Queensland – Volume IV: Suspects' Rights, Police Questioning and Pre-charge Detention*
June 1994	*Report on Cannabis and the Law in Queensland*
In Progress	Report on a Review of Police Powers – Volume V (fingerprinting, body samples, identification procedures, electronic surveillance)

The Division is also currently undertaking a review of funding of the Legal Aid Commission and the Office of the Director of Prosecutions, pursuant to s. 23(c) of the Act. This Report will contain a number of findings and recommendations relating to the administration of criminal justice in Queensland.

The Division has a broad responsibility to monitor the efficiency of the administration of criminal justice in this State. In this capacity, and upon a request by the Director of Prosecutions, the Division established a Committee to review the provision of forensic science services available in Queensland in the investigation, prosecution or defence of criminal matters. In June 1992, as a result of this review, the Commission produced the Forensic Science Services Register, which is of use to the legal fraternity in the conduct of criminal cases as well as assisting in the overall assessment of the state of forensic science resources in the State.

In addition to preparing public reports the Division provides input into the law reform process via submissions prepared in response to discussion papers etc., and through participation in committees and working groups. For instance, in 1993/94 the Division, in conjunction with the Office of General Counsel, prepared for the Commission detailed responses to a Department of Justice and Attorney-General Discussion Paper on review of the Coroner's Act and a Review of the Mental Health Act prepared by Queensland Health. During 1993/94 a representative of the Division has also actively participated in an Office Of Cabinet Working Party on Watchhouses.

The results of research undertaken by the Division for its Police Powers report have been provided to this Working Party. In 1992/93 the Division participated in the preparation of Commission's detailed submission on the report of the Criminal Code Review Committee.

The Division's contribution in the area of reform of criminal law and administration can be assessed by reference to several indicators.

QUALITY OF REPORTS

The quality of the reports prepared by the Division is best judged by suitably qualified, non-partisan readers from outside of the Commission. However, it should be noted that the Commission's reports are typically subject to close critical scrutiny following their release. While various individuals and organisations have disagreed with recommendations contained in these reports, no one has been able to document any significant deficiencies or gaps in the research on which the reports have been based. For example, the Commission's Prostitution Report was attacked by some critics on the grounds that it contained invalid public opinion survey results. The then Parliamentary Committee sought the opinion of two expert researchers in the area (Mr John Walker of the Australian Institute of Criminology and Ms Bronwyn Lind of the NSW Bureau of Crime Statistics and Research). Both reviewers endorsed the general methodology of the survey and the inferences which were drawn from it.

More recently, when the discussion paper on cannabis was released in mid-1993, some criticisms were made in the media of the Paper's estimates of the extent of cannabis cultivation in Queensland. The Commission has never been provided with any evidence or analysis to substantiate these criticisms.

The 1990 'Gaming Machine Report', which seems to have attracted the most criticism was produced several years ago primarily by the then Special Adviser to the then Chairman. At the time, the author of the report was not a member of the Research and Co-ordination Division.

CONTRIBUTION TO PUBLIC DEBATE AND DISCUSSION

Reports prepared by the Division, especially on controversial issues such as prostitution, cannabis and police powers, are widely discussed in the media and other public forums. For instance, the release in June of Volume IV of the Police Powers Report was covered by all the major Television Networks, ABC national, State and regional radio, Brisbane commercial and community radio, the two major newspapers

(including an editorial in *The Courier-Mail*) and numerous regional papers. In addition, reports are provided free of charge to all libraries in the State, members of Parliament, and the heads of all Government departments and criminal justice agencies. The final two volumes of the Commission's report on police powers have also been the subject of public hearings by the Parliamentary Committee.

CHANGES TO LAWS AND PRACTICES

At this stage it is not appropriate to judge the quality and significance of the Division's work in the area of law reform by reference to whether its recommendations have been adopted and implemented by the Government. This is because:

- The preparedness or otherwise of Government to act on recommendations may be determined by political and organisational considerations beyond the control of the Commission.

- Even if there is broad support for recommendations, there will often be a substantial lead time between the production of a report and the passage of legislation through Parliament. For instance, the Commission's recently released recommendations in relation to cannabis will not even be considered by the Government until the Parliamentary Committee has conducted its own inquiry.

However, there may be some benefit in documenting the "state of play" in relation to the major reports prepared by the Division:

- SP Bookmaking: a significant number of recommendations have been adopted including changes to penalty structures and the legalisation of telephone betting with on-course bookmakers.

  In relation to this matter, the Minister for Tourism, Sport and Racing, the Hon. R J Gibbs, said during his second reading speech on 14 April 1994:

  > Legalised telephone bookmaking will allow licensed bookmakers an opportunity to compete with the SP operator. This is in accordance with a key recommendation in the Criminal Justice Commission's report on SP Bookmaking and Related Criminal Activities in Queensland. As recommended, telephone bookmaking will be controlled and regulated through a Government-owned and maintained voice recording and logging system. This system will guarantee integrity for the customer, the bookmaker and the Government. (Hansard, p. 7547)

In the Minister's second reading speech on 27 November 1992 in relation to the 1993 amending legislation, he said:

> Honourable members will be aware of my intention to undertake a full and complete review of the Racing and Betting Act in the near future as a direct result of recommendations contained in the Criminal Justice Commission report. (Hansard, p. 1255)

As a result, the Review of the Racing and Betting Act 1980 Discussion Paper was released to government departments, racing industry organisations and community and business groups.

- Prostitution: major recommendations not adopted, but some minor changes accepted by the Government.

- Police Powers: work still in progress; first three volumes have been the subject of PCJC hearings – no report yet from the Committee.

- Cannabis: report has only just been released; will be the subject of PCJC hearings.

CRIMINAL JUSTICE RESEARCH

In addition to preparing issues papers and reports containing recommendations for change, the Division has published several research reports and papers dealing with aspects of crime and criminal justice in Queensland. The aims of the Division in publishing this material have been to:

- fill basic information gaps about the level and nature of crime in Queensland and provide a base for mapping crime trends

- make the results of research carried out by the Commission and other agencies accessible to a wider audience

- contribute to more informed public debate and discussion on criminal justice issues.

The research has primarily been undertaken pursuant to s. 23(c) and (i) of the Act, which relate to the general responsibilities of the Commission, and s. 56(3)(b), which details a specific responsibility of the Division. Some projects (e.g. the forthcoming information paper on fear of crime) are also relevant to the Commission's

responsibility to ensure that the most appropriate policing methods are being used consistently with trends in the nature and incidence of crime [s. 23(g)] and are contributing to the prevention of crime [s. 56(3)(f)(iii)].

The main publications produced, or in progress, under the general heading of 'criminal justice research' are:

August 1991	*Crime and Justice in Queensland*
March 1992	*Crime Victims Survey, Queensland 1991* (produced by the Government Statistician's Office – an initiative of the CJC)
March 1992	*Youth, Crime and Justice in Queensland – An Information and Issues Paper*
Feb 1994	*Murder in Queensland – Criminal Justice Research Paper No. 1*
In Progress	Fear of Crime
In Progress	Who are the Victims of Violent Crime? An Analysis of the 1991 Queensland Crime Victims' Survey

The publications which have been released to date have been widely disseminated, have attracted considerable media interest, and have been the subject of considerable favourable comment from criminological researchers and other commentators.

The 1991 Crime Victims Survey, undertaken in conjunction with the Government Statistician's Office, was a major research exercise which generated a wealth of data about levels and patterns of crime victimisation in Queensland. Data from this survey formed the basis of a report on Women's Experience of Crimes of Personal Violence prepared by the Women's Policy Unit of the Queensland Office of the Cabinet. The two reports currently being prepared on fear of crime and victims of crime also draw extensively on this survey. In addition, the survey is being used in conjunction with national victims' surveys undertaken by the Australian Bureau of Statistics to monitor long term crime trends in Queensland.

Reference should also be made to the Division's role in the Queensland 'Sibling Study'. This project has been funded by the Australian Research Council (ARC) for a total of $210,000 over three years. The project is a collaborative exercise between the Commission (through the Research and Co-ordination Division), the University of Queensland, Griffith University and Bond University. This is the largest research project of its kind ever undertaken in Australia and has the potential to significantly

add to our understanding of the determinants of delinquent behaviour in adolescents. Such research should prove invaluable for developing crime prevention and control strategies. The proposed study was described by one of the ARC grant application reviewers as serving 'to create an important "critical mass" of research and writing in criminology that should result in Brisbane becoming an internationally recognised locus of work in criminology'.

In addition to undertaking and publishing relevant research, the Division regularly handles requests for information from other government agencies, the media, students and researchers, and members of the public. For instance, in 1993/94 the Division dealt with over 300 requests for information from outside of the Commission. No other body in Queensland regularly performs this role in relation to crime and criminal justice issues.

POLICE SERVICE REFORM

One of the most important responsibilities of the Division is to monitor reform in the QPS and assist in the development of new policing strategies (see Appendix G). These functions are discharged pursuant to s. 23 (g) (h) (i) (j) and (k) of the *Criminal Justice Act 1989*, which relate to the general responsibilities of the Commission, and s. 56 (3)(f) and (h) which relate to the specific responsibilities of the Division. Reports published, or in progress, which deal with the general area of police service reform are:

May 1991	*Attitudes Toward Queensland Police Service – A Report* (survey by REARK)
June 1991	*The Police and the Community, Conference Proceedings* (prepared in conjunction with the Australian Institute of Criminology following the conference held 23-25 October, 1990 in Brisbane)
Jan 1992	*Report of the Committee to Review the Queensland Police Service Information Bureau*
Feb 1992	*Queensland Police Recruit Study, Summary Report #1*
Sept 1992	*Beat Area Patrol – A Proposal for a Community Policing Project in Toowoomba*
Oct 1992	*Pre-evaluation Assessment of Police Recruit Certificate Course*

Jan 1993	*First Year Constable Study, Summary Report #2*
July 1993	*Evaluation of Adopt-a-Cop Pilot Rejuvenation Program*
Oct 1993	*Attitudes Towards Queensland Police Service – Second Survey* (survey by REARK)
Nov 1993	*The Inala Project: A Briefing Paper*
Dec 1993	*Recruitment and Education in the Queensland Police Service: A Review*
Feb 1994	*Informal Complaint Resolution in the Queensland Police Service – A Progress Report*
March 1994	*Police Recruit Survey (January 1994) – Summary Report #3*
March 1994	*Toowoomba Police Services Users Survey (December 1993) – Summary of Findings*
In Progress	Informal Complaint Resolution: Final Report
In Progress	The Implementation of the Fitzgerald Inquiry Recommendations by the QPS: A Review
In Progress	Mid-term Evaluation of the Toowoomba Beat Policing Pilot Project
In Progress	Beat Policing Resource Kit

Other activities undertaken under the general heading of assisting and monitoring police reform include:

- Assistance to the QPS in the development of beat policing projects. A key recommendation of the Fitzgerald Inquiry was that the QPS adopt community policing as its primary policing philosophy. Properly designed beat policing initiatives, in which primacy is given to foot patrols, are one of the most effective ways of implementing this philosophy. To this end, the Division has played a central role in the establishment, operation and evaluation of the Toowoomba Beat Policing Pilot Project. Indeed, it is fair to say that this project would not have commenced but for the Commission's initiative. The Division has also provided substantial input into the design of a beat policing proposal for West End Police Division and is currently preparing a 'beat

policing kit' to assist other districts and regions which are interested in trialing similar initiatives. The potential significance of beat policing was recently recognised by the State Government, which has made provision in the 1994/95 State Budget for additional funding of $0.3 million p.a. for the program currently being trialed in Toowoomba to be expanded to appropriate locations.

- Provision of advice to the QPS on education and training issues. The Commission provides regular feedback to the QPS through its periodic recruit surveys. At a more detailed level the Division frequently provides the QPS with comments on draft Competency Acquisition Modules. For instance, in 1993/94 the Division provided comment on 10 modules. In 1992/93 members of the Division participated in the QPS Working Party to Review the Development Program for Inspectors of the QPS, and the Working Party for the Development of the Evaluation Reflection Component of the Field Training Program.

- Provision of feedback on the Annual Report. In 1993 the Division provided the PCJC and QPS with a detailed review of the 1991/92 QPS Annual Report and Statistical Review. The Division subsequently provided the QPS with detailed comments on drafts of the 1992/93 report and has undertaken to act as a 'reactor' for drafts of the 1993/94 report.

- Participation in establishing and overseeing the Inala Police-Community Network Project. This initiative is aimed at improving relations between police and the community in the Inala area. The Commission is also a joint signatory to a substantial National Campaign Against Drug Abuse (NCADA) grant which is being used to fund a program targeted at reducing drug and alcohol abuse by adolescents in the area. In 1994/95, the Division will be undertaking a full-scale evaluation of the Inala Project.

- Participation in the implementation of the Public Sector Management Commission (PSMC) Review of the QPS. The Division prepared a detailed submission to the QPS concerning this review and in conjunction with the Office of General Counsel has co-ordinated the Commission's involvement in the implementation process.

- Assistance in the provision of feedback on drafts of the QPS revised Policies and Procedures Manual.

One of the ways of measuring the Division's contribution in this area is to examine whether the QPS has taken up the Division's recommendations, and/or utilised the research which has been conducted. In this regard:

- The recruit surveys undertaken by the Division formed part of the source material for the design of the new recruit training course.

- The Police Education Advisory Committee (PEAC) has agreed that the recommendations contained in the 1993 Review of Recruitment and Education in the QPS should be adopted as standing agenda items.

- Data from the 'Attitudes to QPS' surveys have been used extensively by the Corporate Planning section of the QPS. Reference is also made to these surveys in the QPS Program Statement for the 1994/95 State Budget.

- As noted above, the Division has played a central role in promoting the development of beat policing initiatives within the QPS. The importance of such projects has been recognised in the most recent State Budget.

- Data from the Division's evaluation of informal complaint resolution have been provided to the QPS Professional Standards Unit on a regular basis to assist in the refinement of these procedures. The Unit has in turn made this information available to command conferences. In addition, the progress report on informal resolution prepared by the Division was reprinted in full in a recent edition of the Police Bulletin.

- The Division has been requested to assist the QPS in a project to develop performance indicators and workload measures for detectives.

THE CO-ORDINATION FUNCTION

As discussed later in this submission, the Division has not been able to carry out its co-ordination role to the extent envisaged by the Fitzgerald Inquiry and prescribed by the Act. The Division simply does not have the resources or powers to co-ordinate the activities of the various agencies responsible for the administration of criminal justice in Queensland. In addition, were the Division to take on this role, it would arguably be usurping the functions of Executive Government. However, as detailed in the 1993 *Report on the Implementation of the Fitzgerald Recommendations Relating to the Criminal Justice Commission*, the Division has tried to avoid duplication and to ensure effective liaison with other departments and agencies involved in the areas

with which it has been concerned. A number of projects have also been undertaken in collaboration with other agencies, in particular the QPS.

INTRA-COMMISSION RESEARCH

The Division has an important role to play in assisting other divisions, especially the OMD, in the discharge of their functions.

Work which has been carried out recently in this regard includes:

- advice on questionnaire design for the Liquid Waste Inquiry
- practically-oriented research aimed at improving the efficiency and efficacy of informal complaint resolution procedures in the QPS
- development of a methodology for obtaining the views of complainants concerning the complaints investigation process.

ISSUES

SHOULD THE DIVISION REMAIN IN THE CJC OR OPERATE ON A STAND-ALONE BASIS?

The Research and Co-ordination Division is an integral part of the Commission and vital to its effective functioning. The Division informs and advises the Commission on policy and operational issues and, as indicated above, assists other Divisions on research-related issues.

The main argument for establishing the Division as a stand-alone organisation appears to be that there would be less scope for the Division's work to be "tainted" by the law enforcement perspective of other sections of the Commission. However, in practice this has not been a problem. The Division has enjoyed a good deal of autonomy within the Commission and is answerable for its reports only to the Commissioners, not other sections of the organisation. To date, the Division has issued four of a projected five volumes of its police powers report. In preparing this Report the Division has benefited considerably from the practical advice provided by operational personnel within the Commission, but there has been no suggestion that the recommendations contained in the report have been unduly favourable to law

enforcement interests. From a research perspective there are, in fact, considerable benefits associated with being located in the Commission:

- The Division has substantial monitoring functions in relation to the QPS. If the Division is detached from the Commission, there would be no one left to perform this role. Even if these functions were allocated to a new, stand-alone body, it would be very difficult to discharge them effectively. For there to be adequate monitoring, it is essential that there be good lines of access to the QPS. It would be very doubtful that the degree of access which the Division currently enjoys could be maintained if it was split off from the rest of the CJC.

- An increasingly important data source for the Division are the complaints files held by OMD. These files have been used in preparing the police powers report, and will be the primary source material for a major project on police complaints to be undertaken later in the year. Due to strict confidentiality requirements, it would not be possible for an outside body to access this information.

- The high public profile of the Commission makes it relatively easy to win public and media attention for the work of the Division. This is an important consideration, given that one of the most important functions of criminal justice research organisations is to promote informed public debate and discussion.

From a budgetary perspective, there are considerable economies of scale to be achieved from basing the Division in a larger organisation, as it is not necessary to operate a separate administrative structure.

COULD THE DIVISION'S WORK BE DONE BY OTHER AGENCIES?

From time to time suggestions have been raised that some or all of the functions of the Division should be allocated to other agencies. The main agencies to consider in this regard are the QPS, the Queensland Law Reform Commission and the Litigation Reform Commission. For the reasons set out below, it would be inappropriate for any of these other bodies to be given a monopoly to conduct research in areas which currently fall within the purview of the Research and Co-ordination Division.

QUEENSLAND POLICE SERVICE

The QPS has its own research and evaluation capability, but it is very important that some independent monitoring and evaluation role is retained.

- As a general rule, organisations are not particularly good at critically evaluating their own operations. The Commission provides an *independent* perspective on the operations of the QPS – a role which Fitzgerald saw as essential.

- Commission research reports, unlike internal police reports and evaluations, are generally public documents – hence, they can play an important role in informing public debate and discussion.

- The Commission, as an outside body with a different perspective, can help to stimulate reform and innovation. For instance, the Toowoomba Beat Area Patrol Pilot was established largely through the initiative of the Commission.

LAW REFORM COMMISSION

As noted, the Research & Co-ordination Division has undertaken a significant amount of work in the area of reform of criminal law. On one argument, these types of reviews could be undertaken by the Law Reform Commission (LRC), subject to it being provided with adequate resources. However, a crucial difference between the two bodies is that the Commission, unlike the LRC, is not reference-driven. An essential part of the Fitzgerald vision was that the Commission should be a fully independent body, able to identify and tackle problems on its own initiative. The LRC has done some excellent work (concentrated primarily on the civil area) but, as pointed out by Fitzgerald, it can only address issues referred to it by the government of the day. The Commission, by contrast, is able to operate on its own initiative. It seems very unlikely that controversial issues such as prostitution and cannabis would have been referred to the LRC.

It should also be noted that the LRC, as currently constituted under its Act, has a strongly legalistic focus. This means that what constitutes "law reform" is likely to be construed fairly narrowly. By contrast, the Commission, because of its multi-disciplinary character, is able to bring a variety of perspectives to bear on law reform-related issues (see Fitzgerald Report, p. 139).

In practice, the Division would generally not initiate research in an area which has been, or is likely to be, dealt with by the LRC. However, it is important that the

Commission retains the *discretion* to take up matters which might potentially also fall within the jurisdiction of the LRC. If there is concern about the Commission duplicating the work of the LRC or other criminal justice agencies, this could be addressed by inserting into the Act a requirement for the Commission to 'consult with relevant criminal justice agencies before commencing work on a project, in order to minimise duplication and overlap'. If this were done, it would follow logically that a similar provision should also be inserted in the legislation of related agencies. An alternative strategy might be to amend the existing s. 57(1) of the Act to refer to 'agencies in the State concerned with the reform and/or administration of criminal justice in the State', rather than simply government departments.

LITIGATION REFORM COMMISSION

The Division's functions overlap with those of the Litigation Reform Commission only insofar as they relate to the administration, structure and/or practices of the Queensland courts. In March 1991 the Division produced an Issues Paper on the jury system – in 1992 the Litigation Reform Commission recently looked at issues relating to juries. The current inquiry into the adequacy of funding for criminal justice agencies will also deal with some aspects of court administration, to the extent that these affect the ways in which funds are used by Legal Aid and the Director of Prosecutions.

A strong argument against giving the Litigation Reform Commission a monopoly on conducting research in relation to courts is that its reports are not normally public documents. Moreover, as noted above, it is important that the responsibility for evaluating activities of criminal justice agencies (in this case, the courts) should not inhere solely in the agencies themselves. In any event, overlap between the Commission and the Litigation Reform Commission has not been a significant problem in practice. The Commission's Issues Paper on juries came out prior to the Litigation Reform Commission commencing work in this area and helped to inform the work of that body. The risk of future overlap can be further minimised by inserting a general 'requirement to consult' provision in the Act, along the lines described above.

SHOULD THE DIVISION CARRY OUT A CO-ORDINATION FUNCTION?

The Division's co-ordination role is in need of clarification. Part of the difficulty is that the *Criminal Justice Act* defines different levels and forms of co-ordination.

Section 56(1)(b) of the Act states that the Division is the unit within the Commission which will:

> work towards co-ordinating the activities of the Commission and the activities of all other agencies in the State concerned with the administration of criminal justice in the State.

On one reading, this provision requires the Division to play a role similar to that performed by the Office of Cabinet, or a similar central executive agency. However, s. 56(3), which sets out the functions of the Division, talks in more modest terms of developing compatible systems and fostering co-operation between agencies [s. 56(3)(c)]. Section 57(1) simply requires the Commission to liaise with and co-ordinate its own activities, with departments that are concerned with the administration of criminal justice.

It is unrealistic to expect the Division to take on the broad co-ordinating role envisaged by s. 56(1)(b) because:

- The Division does not have the resources to carry out such a role. To perform this function, it would be necessary to devote several staff full-time to liaising with agencies, convening meetings, developing co-ordinated responses, and so on. Without extra resources, this would detract significantly from the ability of the Division to discharge its other statutory functions.

- The Division lacks the necessary authority. There is no statutory obligation on other criminal justice agencies to keep the Commission informed of their activities, or to otherwise provide information required by the Division. The Division has good co-operative working arrangements with most of the criminal justice agencies, but there would be strong resistance from these agencies if any attempt was made to direct them to act in particular ways, or to provide specified information to the Commission.

- As a matter of principle the co-ordination role as envisaged by s. 56(1)(b) is properly an executive function, not one which can or should be performed by the Commission.

The current problems with the Act could be fixed simply by re-wording s. 56(1)(b) to read:

> co-ordinate the activities of the Commission *with* other agencies in the State to ensure that there is no duplication of effort. [emphasis added]

There is no need to amend the other sections which refer to the Division's co-ordination function.

Further observations concerning this issue are made in Chapter 10 in relation to the review of recommendations made in Reports Nos. 13 and 18, and Chapter 11 as to the proposed amendment of the Act.

SETTING THE DIVISION'S FOCUS

In addressing the issue of the focus of the Division it is important to note that:

- the Act gives the Division a very wide range of functions and responsibilities – this has made it difficult for the Division to concentrate on a limited number of areas

- due to the lack of information available about crime and criminal justice in Queensland, the Division was not able to build on an existing stock of knowledge, especially in its early years

- to some extent, research priorities for the Division have been set by factors beyond the control of the Division, such as the decision in *Boe v Criminal Justice Commission* (Appeal No. 319 of 1993) which is discussed below.

Within these constraints, the Division has endeavoured to develop an ordered set of priorities. The Division is currently developing a strategy plan, in conjunction with the QPS and other divisions in the Commission, to determine how its monitoring responsibilities should be discharged in the future. Project selection criteria have been developed to evaluate all new research proposals (see Appendix H). These guidelines emphasise the need for the Division to concentrate on its areas of strength and to minimise duplication and overlap with other agencies. In developing the work program, input is provided by the Commission's other Divisions, the part-time Commissioners and, periodically, the Parliamentary Committee. In addition, the Director of the Division attends meetings of the Inter-Agency Forum on Law Reform where agency representatives exchange information on current projects.

A further strategy for developing future research priorities, particularly in relation to law reform issues and criminal justice research, might be for the Commission to form an advisory committee, with representation at a *senior* level, from:

- The main criminal justice agencies, such as the QPS, Department of Justice and Attorney-General, Corrective Services Commission, Juvenile Justice

Branch of Family Services, Legal Aid Commission and the Office of the Director of Prosecutions

- Other independent research bodies in the area, i.e. the Queensland Law Reform Commission and the Litigation Reform Commission

- Professional bodies such as the Queensland Law Society and the Bar Association.

The advisory committee would only need to meet once or twice a year. Its role would be to comment on proposals for research identified by the Division, and to make proposals for additional research projects. The Commission would, of course, retain control over the research program, but this process would be of assistance in identifying the formulation of this program. Further observations concerning this issue will be found in Chapter 5 and relevant proposals for legislative amendment in Chapter 11.

CRIME STATISTICS FUNCTION

In Report No. 13, the PCJC recommended that the Division take on responsibility for the production of crime statistics for Queensland, including overseeing the development of an integrated criminal justice database (see Chapter 10, Recommendation 37). The Committee estimated that, in order to perform this role, the Division would require an extra 10 staff.

Since the Committee tabled Report No. 13, relatively little has been done to address the poor quality of criminal justice statistics in Queensland. There has undoubtedly been an improvement in the quality of police crime statistics, but there are major problems in the area of court statistics due to the imminent withdrawal of the Australian Bureau of Statistics from this field. Moreover, apart from the completion of an audit of criminal justice databases by the Government Statistician's Office, there has been no significant progress towards establishing an integrated database.

In the Commission's view, it is essential that an organisation *independent* of the main criminal justice agencies assumes responsibility for:

- developing uniform data standards

- promoting database integration

- publishing regular criminal justice statistics.

Given the plethora of criminal justice agencies already in existence, it makes little sense to create yet another specialist body. Of the existing agencies, the two most obvious candidates are the Government Statistician's Office (GSO) and the Commission. Other agencies (such as the Law Reform Commission) either have no statistical expertise or are too closely identified with a particular segment of the criminal justice system (e.g. the QPS). The GSO has undoubted statistical expertise, but at this stage has only limited knowledge of the criminal justice system and associated policy issues. It would also be difficult for the GSO, as part of the State Treasury, to become involved in public debate about criminal justice issues and the interpretation of crime statistics – a function normally performed by Crime Statistics Bureaus in other jurisdictions.

The Commission would be willing to take on the crime statistics role if requested, and if it was given the necessary resources and legislative powers. However, to date the primary focus of the Research and Co-ordination Division has been on using and interpreting criminal justice statistics rather than on generating these statistics. It would require a considerable reorientation of the role of the Division, and an expansion of its staff, to take on responsibility for publishing crime statistics and developing an integrated criminal justice data-base. For these reasons, it may make more sense to allocate these more technical responsibilities to the GSO, and leave the Division free to act as an interpreter and user of the statistics. The main concern of the Commission is that *someone* is given responsibility for improving the quality of criminal justice statistics in Queensland as a matter of urgency. At this stage, the lack of reliable and comprehensive data is a major barrier to conducting effective research on criminal justice matters in Queensland.

BOE V CRIMINAL JUSTICE COMMISSION (APPEAL NO. 319 OF 1993)

Boe, a lawyer with a criminal practice substantially funded by the Legal Aid Office, sought judicial review of the Commission's decision not to conduct a hearing requested by him for the purpose of discharging its responsibility under s. 23(c) of the Act to monitor and report on the sufficiency of funding of that Office and the Director of Prosecutions. The Commission considered that it might legitimately defer this responsibility as part of according different priorities to its wide range of functions and responsibilities within the limits of a finite budget.

On 10 June 1993, de Jersey J in the Supreme Court of Queensland decided that the responsibility was a duty and, the Commission was not entitled to exercise its discretion to decline to hold a hearing on the basis that it was entitled to give discharge of the responsibility a deferred priority. This was because His Honour

considered the responsibility to be one which necessitated discharge on a more or less continual, regular or recurrent basis.

The decision has created particular difficulties for the Division because of the large number of continuing responsibilities allocated to it by the *Criminal Justice Act*. The implications of this decision and the Commission's preferred approach are discussed in Chapters 10 and 11.

FUTURE DIRECTIONS

REFORM OF CRIMINAL LAW AND CRIMINAL JUSTICE ADMINISTRATION

In the short to medium term, the Division's main priorities in the area of reform of criminal law and criminal justice administration are to:

- complete the review of funding of the Legal Aid Commission and the Office of the Director of Prosecutions
- undertake research into the effectiveness of domestic violence legislation in Queensland
- prepare a final report on the desirability and feasibility of transferring the police prosecutions to the Office of the Director of Prosecutions
- design a project addressing the position of victims in the criminal justice system.

In relation to the Fitzgerald Inquiry Review Program, the main law reform issues which have not yet been reported on by the Commission are those relating to drugs other than cannabis and the proposed general review of regulatory laws. Depending on workload demands, the Commission may at a later stage undertake a more general review of the *Drugs Misuse Act*. (The Commission has already been involved in the Criminal Code Review Committee's review of the *Drugs Misuse Act*.) Some preliminary work has been undertaken on regulatory laws as part of the police powers review. At this stage, the Commission's view is that it would be better to address this issue through selected case studies, rather than attempting a full-scale examination of all aspects of regulatory law and enforcement. As staff become available, a detailed proposal for a project along these lines will be prepared.

As discussed below, in the longer term it may be appropriate to consider the establishment of an Advisory Committee to assist the Division and the Commission in the identification of research projects in this area.

CRIMINAL JUSTICE RESEARCH

The Division intends to publish an ongoing series of short research information papers, modelled on 'Murder in Queensland'. These papers will address significant issues in relation to crime and criminal justice in Queensland and will be designed to be accessible to a broad readership. As noted above, two titles are currently in preparation. During 1994/95 it is also proposed to produce an updated version of Youth Crime in Queensland in the information paper format and a paper reporting findings from the Division's research on repeat victimisation.

Further, as part of its statutory responsibility to monitor criminal justice trends, the Division is planning to publish a 'Queensland Justice System Monitor' on an annual basis. The purpose of the Monitor will be to bring together, in a more accessible form, information about trends in reported and unreported crime, court workloads and outcomes, prison populations and agency funding levels. The Monitor should assist policy makers, the media and the general public to obtain an overall picture of what is happening in the criminal justice system, and to identify particular sources of pressure on the system. It was originally planned to produce the first edition of the Monitor in early 1994, but the project has had to be delayed because of staffing shortages and the pressure of other reports.

Resources permitting, the Division also intends to commence a major research project on burglary in Queensland within the next year. Burglary is a crime which touches many people and which costs the community many millions of dollars each year. This project has been prompted by research showing that the burglary rate in Queensland is well above that of the southern States. The aim of the project will be to identify factors which impact on the burglary rate, and to assess the effectiveness of various strategies for reducing the incidence of burglary.

POLICE SERVICE REFORM

The Division, in conjunction with other Divisions of the Commission, is currently devising a long term work program for discharging the Commission's ongoing monitoring functions in relation to the QPS. This material will be forwarded to the Committee when this exercise is completed.

INTRA-COMMISSION RESEARCH

The Division plans to initiate a program of on-going statistical analysis of CJC complaints files to assist the OMD in the identification of trends and problem areas. The Division will also assist the Corruption Prevention Division in evaluating the effectiveness of various anti-corruption strategies, and the Corporate Services Division is undertaking program evaluation reviews.

CHAPTER 6 – CORRUPTION PREVENTION DIVISION

BACKGROUND

THE FITZGERALD FINDINGS

The report of the Commission of Inquiry headed by G.E. Fitzgerald QC[12] addressed the following issues that directly relate to preventing corruption in the public sector:

EDUCATION AND GOOD MANAGEMENT

In s. 3.5.6, Fitzgerald noted:

> Education and good management would also eradicate relatively minor misbehaviour such as misuse of public resources and deliberate time-wastage, which help develop attitudes which lead, in turn, to more serious misconduct.

and

> Ethical education must also play a role in long term solutions to problems. Such education would help individuals to find the correct balance between competing considerations, and should help groups of employees to establish a supportive atmosphere within which it would be harder for corruption to flourish.
>
> . . .
>
> The quality of internal management and supervision has a significant influence on the behavioural standards of employees. Equally, in the absence of meaningful work, staff find other ways to occupy their time. (p. 133)

PUBLIC INTEREST WHISTLEBLOWING

In s. 3.5.7, he commented on the difficulty of encouraging public servants to blow the whistle on corruption:

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[12] Fitzgerald, G E, *Report of a Commission of Inquiry Pursuant to Orders of Council*, Government Printer Queensland, 1989

> It is enormously frustrating and demoralising for conscientious and honest public servants to work in a department or instrumentality in which maladministration or misconduct is present or even tolerated or encouraged. It is extremely difficult for such officers to report their knowledge to those in authority.
>
> . . .
>
> It is also necessary to establish a recognised, convenient means by which public officers can disclose matters of concern. (pp. 133-34)

CORRUPTION IN THE PUBLIC SECTOR

In Section 9.3, he focused on corruption:

> People are always reluctant to suspect their fellows in an organisation, and are disappointed when their suspicions are confirmed. Co-workers tend to make excuses or cover up for each other. As discussed earlier, any organisation's culture magnifies those common tendencies.
>
> Public servants in records offices, registries, communications facilities, taxation and revenue offices, public works and security, for example, are targets for criminals. Official misconduct by a variety of public officers, in key roles and positions, assists and in some instances is essential to the success of criminals. The observations made with respect to police misconduct are therefore of general applicability and concern.
>
> . . .
>
> It is sufficient to record that the evidence before this Inquiry plainly established common and, apparently, growing manifestations of other official misconduct and its central importance in facilitating major and organised crime. (p. 299)

Following these observations, Fitzgerald recommended the establishment of a Criminal Justice Commission that would, among its other functions:

> [p]erform an educative or liaison role with other agencies, departments and private institutions and auditors in relation to prevention and detecting official misconduct. [Recommendation 10(f)(ii)]

THE *CRIMINAL JUSTICE ACT 1989*

Fitzgerald recommendation 10(f)(ii) was embodied in s. 2.29(3)(e) of the *Criminal Justice Act 1989* which requires the Commission to:

> [o]ffer and render advice or assistance by way of education or liaison to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerned with the detection and prevention of official misconduct.

Section 23(a) of the Act states that the responsibilities of the Commission include:

> the acquisition and maintenance of the resources, skills and training and leadership necessary for the efficient administration of criminal justice;

Recognising that corruption prevention was a cost-effective, proactive approach to combating official misconduct, the OMD appointed a corruption prevention officer, who established the Corruption Prevention Program in August 1991.

As the Program developed and matured, its importance to the Commission's overall goals became more apparent, and both the PCJC and the Commission recognised that its effectiveness would be enhanced if it were better resourced.

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE REPORTS

The Committee commented on corruption prevention activities in two reports.

PCJC REPORT 13 – DECEMBER 1991

In this report the Committee took the view that:

> . . . [the Corruption Prevention Officer] is a vital position which should attract greater significance as time passes. The Committee is of the view that its role should be proactive, aimed at raising awareness in the public sector about proper conduct and public duty. ... It is not sufficient if the public sector is asked to resist corruption and the public is asked to report it, if they are not fully conversant with what it is. (pp. 76-77)

PCJC REPORT 18 – AUGUST 1992

This report recommended an increase in resources allocated to Corruption Prevention activities:

> [t]he Parliamentary Committee strongly supports this Corruption Prevention Strategy and recommends to the Commission that the resources of this section be increased,

> and that the section be enhanced. The Committee is firmly of the view that a prevention strategy is the most effective way to improve the standards of behaviour in the public sector. (p. 14)

The establishment of the Corruption Prevention Division (CPD) in March 1993 confirmed the Commission's commitment to the corruption prevention approach and increased the scope and depth of its efforts in this area.

STRUCTURE

The goal of the Corruption Prevention Program is to promote proactive corruption prevention in the public sector, professional organisations and other agencies.

The CPD has a staff establishment of six and operates four sub-programs:

- Public Sector Liaison
- Management Systems Reviews
- Education and Training
- Whistleblowers Support.

PUBLIC SECTOR LIAISON

Liaison with Principal Officers and the Boards of Management of units of public sector administration and with companies and institutions, auditors and other persons concerned with the detection and prevention of official misconduct is an important corruption prevention function because official misconduct thrives in organisations with poorly developed corruption prevention strategies or lax management practices.

MANAGEMENT SYSTEMS REVIEW

The management systems review sub-program was established in August 1993 with the appointment of a Principal Corruption Prevention Officer, Management Systems.

Management systems reviews are an important corruption prevention function because official misconduct flourishes in organisations which have poor internal controls or inadequate reporting procedures, and where there is excessive secrecy which may

conceal corrupt activities, protect wrongdoers from exposure and victimise or harass whistleblowers.

Management systems reviews go beyond financial audits to examine issues which could allow official misconduct such as:

- misuse of power
- neglect of duty
- criminal acts and omission
- favouritism
- harassment and victimisation
- information breaches.

The management systems reviews analyse what management systems are in place to control these types of corrupt behaviour and identify weak-points and loopholes that could be exploited unintentionally or by those with a criminal intent. The reviews also make recommendations on ways of improving the systems through better internal controls and through more effective corruption prevention strategies.

Financial auditing uncovers deviations and variances from standards of acceptable accounting practice. A management systems review looks behind and beyond the transaction and focuses on substance rather than on form, beyond the common audit trail of requisition – order – invoice – payment check – receipt – ledger entry.

The questions the management systems analyst has uppermost in mind are not how the accounting system and the internal controls stack up against auditing standards but rather:

- what are the current system risks that expose this unit or operation to potential corruption?
- what previous internal control weaknesses have been identified and what remedial action has occurred?
- where are the weak links in the system chain of control?

- what deviations from the management controls and the conventional accounting practices are possible in the system?
- what would be the simplest way to compromise the system?
- what control features in the system can be bypassed by higher authorities?

EDUCATION AND TRAINING

A well-informed and trained staff is the best source of information on corruption in all its forms. The Division has developed an education strategy to train and inform public sector employees about what is involved in official misconduct, how to report suspect behaviour internally and to the Commission and how to carry out a corruption risk assessment. The education program involves:

- workshops, seminars and presenting papers at conferences on public sector corruption, ethics and accountability and the detection and prevention of white collar crime
- lecturing at universities, TAFE Colleges and Schools on corruption prevention
- publishing manuals, worksheets, newsletters, articles and pamphlets on corruption prevention
- presenting lectures to Aboriginal and Torres Strait Islander communities, ethnic communities, professional bodies and community groups on the role and function of the Commission and how to effectively report suspected official misconduct.

The CPD works closely with the OMD, and liaises with principal officers, public sector CJC liaison officers and university researchers to identify certain types of behaviour which have given rise to an increase in allegations of official misconduct.

The Division has also identified those areas of potential official misconduct which need to be on the public agenda, such as the increase in school based assault, the ignorance of risk assessment techniques, the unlawful release of confidential information and the victimisation of whistleblowers. These issues were used as the themes of conferences, workshops and seminars organised by the Division.

Inadequate communications, ignorance about risk assessment and corruption prevention and excessive secrecy have been addressed through a systemic education program aimed at public sector administrators and employees.

Public education initiatives also involved providing lectures and tutorials at universities, TAFE colleges and schools on the role and function of the Commission, professional ethics, management accountability and corruption prevention techniques.

These activities are supported by articles in professional journals, brochures and posters encouraging the public to contact the Commission when they suspect serious official misconduct.

WHISTLEBLOWERS ADVICE AND SUPPORT

In response to section 3.5.7 of the Fitzgerald Report, the Division has initiated a support program which offers advice, support and referral for people who have made a complaint to the Commission and are experiencing harassment or added stress as a result. The role and functions of this program are detailed on p. 70 of this Report.

ACHIEVEMENTS

PUBLIC SECTOR LIAISON

The Division believes that it is the responsibility of public sector managers to prevent corruption in their organisations. It is the Division's role to assist them to do this as effectively as possible. The following table shows the scope of liaison activities in the review period:

TABLE 6.1: SCOPE OF PUBLIC SECTOR LIAISON ACTIVITIES

Government Departments	Local Government Authorities	Universities and TAFE Colleges	Other
21	8	6	15

To ensure that the assistance provided was timely and helpful, feedback was sought from the client groups on the effectiveness of the management liaison activities (Table 6.2).

TABLE 6.2: CLIENT REPORTED ASSISTANCE OF PUBLIC SECTOR LIAISON

No Assistance	Limited	Partial	Considerable	Complete
0	1	8	19	21

MANAGEMENT SYSTEMS REVIEWS

Another major principle is that management accountability makes for more effective corruption prevention. Table 6.3 shows the scope of management systems and various activities in the review period.

TABLE 6.3: MANAGEMENT SYSTEMS REVIEWS

Public Sector Unit	Review Issues	Recommendation Areas
A	Internal control and management practices including: • System support and organisational commitment to administrative propriety • Purchasing and tendering processes • Asset management • Some travel policies and procedures	• Establishment of a Code of Conduct and official misconduct reporting system • Preparation of financial, administrative and purchasing manuals and guidelines • Staff training • Improved internal control • Comprehensive asset management system

Public Sector Unit	Review Issues	Recommendation Areas
B	Management practices including: • operating guidelines • accountability systems • resource management	• Preparation of guidelines on Code of Conduct and conflict of interest • Clarified responsibilities and lines of accountability • Documentation of operating procedural guidelines • Personnel practices • Information, property and student security
C	Asset and risk management of workshop related buildings and facilities	• Improved security of assets and staff
D	Security materials management systems	• External security and access to office areas • Secure material storage • Internal security systems and procedures • Security in regional offices • Risk management program
E	Security of: • drugs storage • operational systems • premises	• Security procedures within the clinic • Security of ordering and collection of drugs • Risk management program
F	Current policies and documentation advising staff on the requirement and method of reporting official misconduct	Draft guidelines and/or advice on policy and documentation provided to approximately 80% of Queensland public sector units.

Feedback was sought from the client groups on the effectiveness of the management systems reviews. Feedback from Principal Officers on four initial management system reviews indicated a high level of satisfaction with their quality and value and with the

helpfulness of Commission staff. Additionally, they reported a high (85%) acceptance of review recommendations and a similarly high projected implementation (88%) when all proposed action is complete.

PUBLIC SECTOR EDUCATION AND TRAINING

The following table shows the scope of liaison activities in the review period:

TABLE 6.4: PUBLIC SECTOR EDUCATION ACTIVITIES

Teachers Associations	Universities TAFEs	Other Agencies	Workshops	Conference Papers	Journal Articles
16	8	16	25	28	4

EFFECTIVENESS OF THE EDUCATION AND TRAINING PROGRAM

In order to gauge the effectiveness of the education initiatives and to provide useful information which would allow the Division to improve the effectiveness of conferences, workshops and lectures all education activities were followed up with feedback surveys (Table 6.5).

TABLE 6.5: CLIENT REPORTED ASSISTANCE OF EDUCATION PRESENTATIONS AND WORKSHOPS

Limited	Partial	Considerable	Complete
8	60	342	87

PUBLICATIONS

A Policy and Publications Officer was appointed in June 1993 to manage the major publications produced by the Commission. He is based administratively in this Division.

The publications produced by the Division have included:

- ***Corruption Prevention Manual***

  Since publication of the manual in November 1993 over 1200 copies have been sold in every State of the Commonwealth, to law enforcement agencies, Auditor-General Departments, Treasury Departments, universities, major corporations, and large law and accountancy firms. It has also sold internationally in four countries and is now on the reading list for a major US university.

- **Reporting Corrupt Conduct in the Queensland Public Sector**

  A brochure detailing the thirteen most asked questions about reporting suspected official misconduct to the Commission.

- **Selling Your Secrets**

  An issue paper discussing the unlawful release of confidential information.

- **Concerned Citizens or Disloyal Mates**

  A conference paper discussing various aspects of Whistleblowing.

- **Reporting School Based Official Misconduct**

  A brochure designed to explain to teachers the Commission's role in investigating allegations against teachers.

- **The Reporting Corruption Poster**

ABORIGINAL AND TORRES STRAIT ISLAND LIAISON & EDUCATION

A program of ATSI liaison was established in June 1993 with the appointment of an ATSI Liaison Officer. This is a training position funded by the Federal Aboriginal and Torres Strait Islander Commission.

The objectives of this sub-program are to:

- educate and inform ATSI communities about the role and function of the Commission
- help ATSI Council administrators develop better corruption prevention management systems
- encourage ATSI communities to work with the Commission to reduce corruption.

The following table shows the scope of ATSI liaison activities in the review period.

TABLE 6.6: ATSI LIAISON ACTIVITIES

Community Liaison	ATSI Media	Presentations	Conference Papers
13	2	3	2

ISSUES

THE NEED FOR THE CORRUPTION PREVENTION DIVISION

The Division is a cost effective response to many of the issues raised in the Fitzgerald Report. It has gained a reputation both in Queensland and nationally as a centre of expertise that addresses a range of issues through senior public sector liaison, management systems reviews, education programs and whistleblowers support that are not addressed by other activities of the Commission or by other Queensland public sector agencies.

EDUCATING PEOPLE ABOUT THE NEED FOR CORRUPTION PREVENTION STRATEGIES TO COMBAT WHITE COLLAR CRIME

The white collar crimes of fraud, embezzlement, theft of goods and property, harassment, and official misconduct do not create the public fear or concern that organised crime, drug trafficking, assault or street violence does. Yet increasingly research is indicating the magnitude of the cost of white collar crime. For example:

- The estimated cost of fraud in Australia is between $6.9b and $13.7b per year *(Commonwealth Law Enforcement Review 94)*

- The Commonwealth Auditor-General estimates that fraud in any organisation (public or private) is likely to be 2-5% of turnover (NSW Fraud Control Guidelines)

- The 1992 Institute of Criminology *Cost of Crime* report estimates the following annual costs:

–	fraud	$10,240m
–	drug offences	1,200m
–	property damage	1,000m
–	break & enter	893m
–	shoplifting	750m
–	theft	667m
–	assault	331m
–	homicide	275m
–	robbery/extortion	93m

Some current divisional strategies include:

- Public sector training in ethics, risks, analysis, risk management and the development of effective internal controls.

- Publications and presentations on the role the public can play in combating white collar crime.

- Advice and assistance to public sector managers in implementing effective internal control strategies.

GETTING ACROSS THE MESSAGE THAT CORRUPTION FLOURISHES IN AREAS OF POOR MANAGEMENT SYSTEMS

There are two ways to combat corruption – detection and prevention. The CPD focuses on preventive strategies that will assist public sector administrators assess the corruption risks and close the loopholes that those with a criminal intent seek to exploit.

DEMONSTRATING THE IMPORTANT ROLE EDUCATION PLAYS IN A CORRUPTION PREVENTION STRATEGY

An important aspect of corruption prevention is training public sector administrators to carry out risk assessment, and develop prevention strategies and ethical training programs for their staff.

While other agencies are responsible for developing codes of conduct, the CPD focuses on training programs that develop an understanding of what constitutes corrupt behaviour, the need for public sector ethical values and the responsibility to report suspect behaviour.

ENCOURAGING PUBLIC SECTOR AGENCIES TO INCREASE COMMITMENT TO CORRUPTION PREVENTION

Surveys carried out by the Commission have revealed that:

- Less than 10% of agencies had established effective official misconduct reporting mechanisms
- Less than 12% of public sector agencies have carried out an effective corruption risk assessment
- 71% of public sector employees had not been given any training in risk assessment or corruption prevention.

These conditions leave most public sector agencies at significant risk. The Corruption Prevention Division is a prime source of expertise in assisting organisations to address these problems. The Division is becoming recognised locally and nationally as an effective source of skill and knowledge in this area.

Therefore, the Division has been able to actively assist agencies by:

- Providing discussion and advice on their corruption prevention policy development and documentation
- Providing effective examples of policy documents in areas such as reporting official misconduct, conflict of interest and codes of conduct
- Providing training support materials and assistance with methodology with internal corruption prevention and risk assessment training.

RECOGNISING THAT PEOPLE'S ATTITUDES TO ACTIVELY PREVENTING CORRUPTION CHANGE SLOWLY

Four widely accepted attitudes continue to work against reducing the incidence of corruption in the public sector:

- fraud against government is a victimless crime and therefore not really a crime at all
- it's un-Australian to dob-in a mate
- there's no corruption in *my* agency
- reporting corrupt activity will not bring about effective change.

A survey conducted by the Independent Commission Against Corruption in March 1994 revealed that over one quarter of NSW public sector employees believe that there is no point in reporting corruption as nothing useful *will* be done about it, 14% believe that nothing useful *can* be done about it and 75% believe that whistleblowers who report corruption are likely to suffer for it. There is no reason to believe that attitudes among public sector employees in Queensland are markedly different.

The Division's education program organised major conferences on Fraud on Government (1992), Reporting Official Misconduct (1993) and The Unlawful Release of Confidential Information (1993) to combat these myths. Further conferences and workshops are planned to continue this process.

CORRUPTION PREVENTION ACTIVITIES COMPLEMENT THE WORK OF THE OFFICIAL MISCONDUCT DIVISION

The OMD receives complaints and investigates allegations of official misconduct, misconduct and matters connected with organised crime. It is a prime source of information for the CPD, which analyses the data collected by complaints officers and the data contained in the reports of investigations carried out by OMD teams.

The Division works in close association with OMD in developing a program of management systems reviews and in determining which organisations need to be followed up with a compliance review. These reviews consider the implementation of recommendations contained in Commission reports to reduce the incidence of corruption.

Officers from the CPD and the Complaints Section of the OMD meet regularly to analyse complaints to identify organisations that may require assistance in developing a corruption prevention strategy or specific assistance to address a particular category of allegation of official misconduct.

OMD investigations that reveal at risk management systems are noted. The CPD then liaises with the principal officer of the organisation about management system improvements.

OMD investigation reports which contain recommendations for procedural changes are also analysed and are included in the Division's management systems reviews program.

MYTHS AND MISCONCEPTIONS

THE COMMISSION'S CORRUPTION PREVENTION ACTIVITIES ARE UNDULY COSTLY

Corruption Prevention Division activities consume less than 3% of the Commission's resources.

Its conferences and workshops have been self-funding because a modest fee was charged to cover costs. Sales of the *Corruption Prevention Manual* have already covered production costs.

Costs involved in presenting papers at conferences outside of Brisbane have largely been met by the organising departments.

FUTURE DIRECTIONS

The Division will continue to develop expertise in its four sub-programs, with the following initiatives to be undertaken in 1994/95:

PUBLIC SECTOR LIAISON

- Develop a quarterly newsletter for CJC liaison officers
- Conduct half yearly conferences for CJC liaison officers
- Develop a Corruption Prevention Strategies and Control workbook for principal officers and boards of management of units of public administration
- Develop a manual on the Corruption Equation for Workplace Corruption
- Develop a booklet on Constructing a Corruption Prevention Strategy

MANAGEMENT SYSTEMS REVIEW

- Develop a twelve month work program of management systems reviews
- Conduct training sessions and workshops on risk management
- Provide advice and comment to public sector units on risk management and corruption prevention initiatives
- Prepare issues papers on aspects of corruption prevention in various management systems

EDUCATION AND TRAINING

- Conduct a series of workshops on the Internal Investigation of Official Misconduct

- Conduct workshops on Ethics and Accountability in the Public Sector
- Prepare material on corruption prevention for inclusion in the school curriculum
- Develop a brochure on the way the Commission receives, assesses and investigates complaints
- Design a corruption prevention poster for public sector agencies
- Develop information in languages other than English on the understanding and reporting of official misconduct, the process of making a complaint and reporting suspected organised crime activity.
- Continue to develop effective liaison with Aboriginal and Torres Strait Islander communities
- Develop more culturally appropriate methods for Aboriginal and Torres Strait Islander women to bring matters to the attention of the Commission
- Develop a pamphlet for Aboriginal and Torres Strait Islanders on reporting corruption

WHISTLEBLOWERS' SUPPORT PROGRAM

- Develop a booklet of advice for whistleblowers
- Develop a brochure on the Whistleblowers Support Program for complainants
- Develop a training program for CJC staff who have direct contact with whistleblowers

CHAPTER 7 – OFFICE OF GENERAL COUNSEL

BACKGROUND

In December 1992 the Office was established as the Division of the Office of General Counsel under s. 19(2)(a) of the Act with General Counsel as a Director. This was necessary in order that General Counsel be able to exercise powers as the Chairperson's delegate when required, particularly in making decisions concerning the issue of compulsory processes. Under s. 140(1) of the Act, the Chairperson's powers may only be delegated to a Director of the Commission.

The Commission has also appointed an Official Solicitor who has been made part of the Office. The Official Solicitor acts for the Commission in any proceedings in which it is involved, and briefs barristers, including General Counsel, who advise, represent or act for it. General Counsel is also administratively responsible for the Misconduct Tribunals, and presides at Commission hearings.

STRUCTURE

In the past 12 months, the use of the Commission's resources has been reviewed and redeployed, so that the Office has reduced from eight staff (General Counsel, Official Solicitor, four other lawyers and two support officers) to four (General Counsel, Official Solicitor, one other lawyer and one support officer). This has enabled more legal resources to be allocated directly to the OMD to facilitate it to carry out more of its own legal work.

ACHIEVEMENTS

The Office continues to provide professional legal and strategic advice to the Commission, its organisational units and the Chairperson, and represents or acts for it in legal matters. It works with the Research and Co-ordination Division in the preparation of submissions on criminal justice and legislative issues.

Since the previous Three-Year Review, the Office has established a database to record information in relation to its work. It continues to provide legal education for the Commission by circulating advice concerning new legislation and important court decisions.

The Office continues to advise the Commission in many areas, including criminal, administrative, contract, industrial, statutory interpretation and policy issues. Since the previous review it has completed the Code of Conduct, which was regarded by the Committee in Report No. 18 as an important part of the Office's work, and this has been adopted by the Commission. In conjunction with the Personnel Services Section of the Corporate Services Division, it has prepared the Commission's human resource policies. It has also updated contracts of employment, confidentiality agreements, consultancy agreements, and the Commission's standard forms for the exercise of compulsory powers. These documents are in a continual state of review and refinement, and reflect amendments to the Act such as that which commenced from 10 December 1993.

An important responsibility which now has been vested in General Counsel by the Commission since Report No. 18 is to consider reports under s. 26 of the Act and certain other Commission publications to ensure that they comply with the principles of procedural fairness before release.

General Counsel has also continued to be personally responsible for preparing proposed amendments to the Act and consulting on behalf of the Commission with the Department of Justice and the Attorney-General, the Office of Cabinet and Parliamentary Counsel in relation to these matters. The history and status of amendments to the Act which have been proposed by the Commission and the Parliamentary Committee is set out in Chapter 11 of this submission.

General Counsel has represented the Commission before the Supreme Court and Court of Appeal. He and other Office lawyers have also been junior counsel in these jurisdictions. In addition, Office lawyers have appeared throughout the State, and, on one occasion, interstate in answer to summonses and subpoenas seeking material held by the Commission. Since the previous review there has been an increasing number of these applications. Responding to each involves a significant diversion of the Commission's resources from other pressing work – in addition to the direct costs involved, the preparation of affidavits and court appearances takes an average of two working days' effort. On a number of occasions, applications were not proceeded with after this work had been done. The Commission is seeking to address this matter through an amendment to the Act that would strike an appropriate balance between the essential confidentiality aspects of the Commission's functions and the need to make relevant evidence available to parties in legal proceedings.

The commencement of the *Freedom of Information Act 1992* has also significantly taxed the Commission's resources. The Commission supported this legislation and the application of the legislation to it. The Office provided the legal foundation to respond to FOI requests. It prepared an FOI Manual. The Freedom of Information

and Administrative Law Division of the Department of Justice and Attorney-General acknowledged the valued contribution of the legal officer responsible in the preparation of its Freedom of Information Policy and Procedures Manual. Office lawyers have also conducted many of the internal or external reviews arising from FOI applications.

FUTURE DIRECTIONS

The Office will continue to attend to the numerous other legal and policy matters which have been illustrated above. General Counsel will continue to be available to directly advise the Commission, Chairperson and Directors as required.

CHAPTER 8 – CORPORATE SERVICES DIVISION

BACKGROUND

In recommending the establishment of the Commission Mr Fitzgerald said:

> For administrative purposes the CJC will require the services of a competent secretariat. An Executive Director should be appointed to control the CJC's Secretariat and to co-ordinate the CJC's operational functions. (p. 30)

Section 64(1) of the *Criminal Justice Act* states:

> The Commission may employ an executive director and such directors and other staff as are necessary for the effective and efficient discharge of the functions and responsibilities, and exercise of the powers, of the Commission and of each of its organisational units.

STRUCTURE

Under s. 19(2) of the Act, the Commission established a Corporate Services Division under the control of the Executive Director. The Division develops policies and procedures necessary for the provision of administrative and logistical support and the control and co-ordination of the Commission's operational functions.

To ensure that the operational areas of the Commission are able to function in an efficient manner, the Corporate Services Division offers support through the following functional areas:

- Finance and Administration Section
- Personnel Services Section
- Information Management Branch
- Executive Support Unit
- Media Unit.

ACHIEVEMENTS

As part of the Division's on-going support services, regular reviews of the financial, computing and human resource systems are carried out.

With respect to human resources, a training and professional development strategy has been developed and is being implemented. In Finance, the cash management program has been refined to permit improved budget formulation, monitoring and review. In Information Management, equipment and software have been upgraded generally to increase availability and achieve a standard working environment. Further, the intelligence database has been upgraded and the stated target of 35% of computer users have been transferred to the Windows-based operating environment.

Listed below are some major achievements of the Division since July 1992:

- completed a comprehensive physical security upgrade at the Commission's premises;
- installed an electronic banking interface to enhance bank reconciliation procedures and provide timely information for cash flow purposes;
- developed an inventory system for stores and stationery;
- continued the enhancement of computing facilities available across the network of 250 workstations;
- commenced a three-year strategy to achieve a standard computing operating environment for all officers;
- enhanced three major computer applications – RECFIND, records management software; CID, the Intelligence Division database; and the database of the Complaints System;
- maintained a rigid program of returning to source, external material acquired through compulsory process, investigative hearings or voluntary collection;
- developed a Training and Development Strategy to ensure staff training and professional development is conducted in a co-ordinated and cost effective manner;
- produced a comprehensive Human Resource Management Policy and Procedures Manual; and

- prepared and implemented an Equal Employment Opportunity Management Plan.

FREEDOM OF INFORMATION (FOI)

When the *Freedom of Information Act* was introduced in November 1992, the Commission established and staffed an FOI unit. Whilst the Executive Director has administrative responsibility for this function, it operates independently, concentrating solely on matters relating to the administration of the *FOI Act*. Since the unit commenced operations, 121 of the 130 applications for access to documents have been finalised. The annual public Statement of Affairs required by the *FOI Act* was produced in August 1993 and is intended to assist and increase the community's understanding of the CJC's role.

Staffing of the FOI unit has been reduced from the original three to one as a consequence of a reduction and stabilisation in the number of applications received.

Set out below are tables of statistics regarding FOI applications received.

TABLE 8.1: FREEDOM OF INFORMATION STATISTICS - APPLICATIONS AND REVIEWS (19 NOVEMBER 1992 - 27 JUNE 1994)

App'n Type	Applications			Reviews			
	Total App'ns	Decisions Made	Still Under Consider-ation	Internal Review		External Review	
				Received	Completed	Lodged	Finalised
Personal	84	84	-	9	8	5	-
Non-Personal	46	40	6	7	7	3	-
Total	130	124	6	16	15	8	-

TABLE 8.2: FREEDOM OF INFORMATION STATISTICS - DECISIONS (19 NOVEMBER 1992 - 27 JUNE 1994)

App'n Type	Full Access	Partial Access	Full Denial	Refused (i)	Refused (ii)	Withdrawn (iii)	Withdrawn (iv)	Transferred	Total
Personal	16	47	6	10	1	2	1	1	84
Non-Personal	5	22	2	2	-	6	3	-	40
Total	21	69	8	12	1	8	4	1	124

Notes: (i) Access refused as no related documents were located
(ii) Existence of documents neither confirmed nor denied in terms of s. 35 of the Act.
(iii) Application deemed to be withdrawn as fee required to be paid was not paid
(iv) Applicant withdrew application

ISSUES

STAFF CEILINGS

The number of positions approved for the Commission (263) was determined in early 1990. In its four years of operation, the Commission has, not unexpectedly, found it necessary to make some changes to its organisational structure. Due largely to operational requirements, the Commission, from time to time, has found it necessary to engage additional (supernumerary) employees on a temporary, casual or program dependent basis.

To facilitate this, the Commission approached the Attorney-General, as the Minister responsible for the CJC, with a view to obtaining some flexibility to set differing staff establishment levels as requirements dictate. In granting this flexibility, the Attorney-General approved criteria for a temporary increase of the establishment base of 263 which includes ensuring that the amount expended on salaries and related costs in the

engagement of additional staff must be met by the Commission from its non-labour budget.

As mentioned in the introduction of this Report, the Commission's permanent staff establishment consists of 171 civilians and 92 police. However, what you see is not always what you get.

The police are dispersed across two Divisions as follows:

- Witness Protection (including Operations Directorate) – 26
- Official Misconduct Division – 66

Within the OMD, police officers perform the following tasks – surveillance and technical support (18), JOCTF activities (5) and general investigations and operations (43). Taking into consideration recreation leave entitlements, programmed rest days and attendance at police training courses, it is estimated that there are only approximately 75% of police investigators available at any time.

SECURITY

In response to a recommendation of the PCJC that an independent review of the Commission's security procedures be undertaken, the Director of Intelligence of the NCA recommended the creation of a permanent position of Security Manager.

This recommendation was immediately implemented. The position was advertised and the appointee subsequently took up duty in April 1994. Indeed, all but two of the 31 recommendations in the abovementioned report have been implemented by the Commission.

The Security Manager has reviewed the Commission's Security Guidelines, modified them where necessary and they are currently being printed and incorporated into a manual which will form part of the Commission's series of Policy and Procedures Manuals. Obviously, work on reviewing and improving security will be an on-going task.

BUDGET

The Commission's budget for 1993/94 was $21,050,000, comprising a $20,651,000 appropriation from the Consolidated Revenue Fund and $399,000 income from the sale of assets etc. Table 8.3 shows the distribution of the budget:

TABLE 8.3: DISTRIBUTION OF BUDGET (1993/94)

Executive	$ 528,454
General Counsel	$ 517,267
Misconduct Tribunals	$ 206,312
Official Misconduct	$ 8,676,626
Witness Protection	$ 1,545,142
Research & Co-ordination	$ 1,089,703
Intelligence	$ 1,296,658
Corporate Services	$ 6,740,999
Corruption Prevention	$ 448,839
Total	**$ 21,050,000**

Of the budget, 68% ($14,300,000) represents labour costs and 32% ($6,750,000) is non-labour costs. With regard to labour costs, 66.7% ($9,538,100) represents civilian salaries and associated on-costs whilst 33.3% ($4,761,900) is attributable to police.

The cost of maintaining the CJC, excluding the police salary costs, represents approximately 3.4% of the overall budget of the QPS.

FUTURE DIRECTIONS

To a large extent, the future efforts of this Division are dependent on the projects and operations of the other areas of the Commission. The current emphasis on reviewing systems, policies and procedures to ensure that the services provided by staff of the

Division accord with the initiatives and priorities of the operational divisions of the Commission will continue.

With regard to FOI, the very nature of the Commission's functions and responsibilities will no doubt ensure a continuing flow of applications seeking access to Commission documents. These applications will be processed in compliance with both the meaning and the spirit of the legislation, and with due regard to the Commission's accountability to the people of Queensland.

CHAPTER 9 – MYTHS AND MISCONCEPTIONS

Since the Commission's inception, a number of myths and misconceptions have arisen about its operation. Such matters often arise out of misunderstandings, rumour, prejudice or lack of knowledge in respect of the reasons for the Commission and its method of operation. This Chapter provides details of the major myths and misconceptions that have arisen from time to time. Those that relate to the Commission as a whole are specifically addressed, whilst others that relate more to the activities of a particular Division are detailed elsewhere in the report.

THE COMMISSION IS ACCOUNTABLE TO NO-ONE

A criticism often made of the Commission, but one founded on ignorance, is that the Commission is not accountable and that its operations and exercise of powers are not subject to effective scrutiny. The Commission is:

- Subject to monitoring and review by the Parliamentary Committee of which the current inquiry is just one example. As Committee members are aware, the Committee has directed literally hundreds of queries and requests for reports to the Commission since its establishment. Much of the Committee's scrutiny has been searching and critical.

- Subject to judicial review pursuant to the provisions of s. 34 of the *Criminal Justice Act* by way of application to the Supreme Court claiming that an investigation is being conducted unfairly or is not warranted. The procedure for the making of such applications is simple and expeditious.

- Subject to scrutiny by the criminal courts upon the trial of persons charged as a result of its investigations.

- Subject to s. 75 of the *Criminal Justice Act* if it appears to the Chairperson or his delegate that a notice under s. 69 would relate to information, a record or thing subject to confidentiality imposed by Act or law or oath taken.

- Subject to the provisions of s. 138 which makes it an offence for contravening or failing to comply with a provision of the *Criminal Justice Act*.

- Supervised by a Chairperson whose fitness for office is intensely scrutinised and whose tenure is limited to a maximum of five years.

- Supervised by part-time Commissioners with limited tenure and from a wide background of disciplines and community involvement.

- Able only to exercise its powers through a strictly limited class of persons, namely the Chairperson or his/her delegate who must be a Director of the Commission.

- Subject to the imposition of strict procedures for the issue of all compulsory process by the Commission, in particular the keeping of proper records of applications for the exercise of powers disclosing details of the time of the application for the warrant, copies of the material submitted in support of the application, the name of the applicant, details of the person and/or premises and things which are the subject of the warrant, the suspect offence or offences for which the warrant was issued.

In addition, the Commission is accountable to the public through the media. The Commission has a full-time Media Liaison Officer, provides a monthly report on its operations, engages in public inquiries where appropriate and endeavours to the extent permissible to respond frankly to media queries.

THE COMMISSION HAS SET ITSELF UP AS AN ALTERNATIVE LEGISLATURE

From time to time the Commission has been criticised for setting itself up as an 'alternative legislature'. Such criticisms appear to have been prompted by the Commission's preparedness to undertake research on controversial issues such as prostitution, cannabis and police powers.

The characterisation of the Commission as an alternative legislature is mistaken on several grounds:

- All that the Commission can do is recommend changes to the law. Notwithstanding the wording of section 21(1)(a) of the Act, the Commission has no power to *initiate* reform – it can only advise the Parliament as to the desirability of introducing certain reforms. This is no different to the role played by independent law reform commissions in Queensland and other jurisdictions, except that the Commission's terms of reference are not externally determined. Moreover, the Commission has recommended that s. 21(1)(a) be amended to remove the reference to initiating reform (see Chapter 11).

- Once a report is released, the Commission plays no further role in the law reform process. The Commission's position has consistently been that the acceptance or rejection of its reports is strictly a matter for the Government. The Commission has never sought to pressure the Government into accepting its proposals. The role of the Commission is simply to undertake objective research and analysis and promote informed public debate.

- To date, all of the major reports of the Commission, such as those relating to prostitution, cannabis, SP bookmaking and police powers, have been prepared in response to recommendations of the Fitzgerald Inquiry. Under s. 21(4) of the Act, the Commission has a responsibility to 'monitor, review, co-ordinate and initiate' implementation of the[se] recommendations. In preparing these reports, the Commission has therefore been acting consistently with the wishes of Parliament rather than setting itself up as an 'alternative legislature'.

THE COMMISSION INHIBITS POLICE IN THE PERFORMANCE OF THEIR DUTIES

Not totally restricted to views expressed by Police, this myth alleges that the fear of being reported to, and investigated by, the Commission, prevents officers from carrying out the duties they would otherwise perform. Such concerns are unfounded; however the OMD has taken a number of initiatives to ensure that such beliefs are dispelled. This aspect is specifically addressed in Chapter 2, pp. 53-55.

THE COMMISSION IS A STAR CHAMBER

This description has been used at times to describe the Commission's private investigative hearing procedures. It is the Commission's view that this description arises either out of ignorance of the procedures or alternatively is intended to discredit an invaluable investigative tool. As this myth relates specifically to one of the Commission's investigative processes, it is addressed in detail in Chapter 2, pp. 55-57.

THE COMMISSION'S HEARINGS ARE UNDULY SECRETIVE

The Commission has been accused of having a preference for closed hearings and being obsessed with secrecy. An examination of the Commission's hearings since its inception, together with detailed discussion regarding the important considerations that are taken into account in deciding whether a hearing should be a public or private one, is included in Chapter 2, pp. 57-59. The Commission submits that an objective

analysis of the matter would establish that there is no foundation to support this allegation.

THE COMMISSION EXPOSES THOSE THAT IT INVESTIGATES TO A RISK OF DOUBLE JEOPARDY

Persons liable to investigation by the Commission are often heard to complain that the Commission infringes the rules of double jeopardy by taking or recommending disciplinary action against an officer in relation to circumstances which also give rise to a criminal charge against the officer. Such complaints result from a misunderstanding of the law. A detailed discussion dispelling this misconception is included in Chapter 2, pp. 59-61.

THE COMMISSION'S INVESTIGATIONS TAKE TOO LONG TO BE FINALISED

Whilst this belief may well have had some foundation in the early days of the Commission, a number of procedural and administrative improvements, consequent upon a change in the law in May 1992, which provided the Commission with a discretion to investigate or not, have considerably reduced the time taken to finalise matters. Factors which contributed to earlier delays are outlined in Chapter 2, pp. 61-63 together with more recent statistics that demonstrate that the initiatives taken by the OMD have substantially overcome the earlier problems.

THE COMMISSION HAS FAILED TO TAKE ACTION IN RELATION TO FALSE COMPLAINTS

This myth centres on allegations that the Commission has no interest in pursuing persons who make false allegations. On the contrary, it has been Commission policy to pursue prosecutions in these matters wherever a charge can be proven. A number of such prosecutions have been successfully pursued. Further details in this respect can be found in Chapter 2, pp. 63-69.

THE COMMISSION HAS FAILED TO PROVIDE ADEQUATE ADVICE AND SUPPORT TO WHISTLEBLOWERS

The main criticism in this area is that the Commission uses information provided by whistleblowers without providing adequate follow-up counselling and support. Such criticism indicates a lack of understanding of the Commission's endeavours to provide

adequate support and protection to whistleblowers. These endeavours are detailed in Chapter 2, pp. 70-72.

THE COMMISSION IS A "SUPER POLICE FORCE"

This allegation appears to centre on the Commission's involvement in the investigation of organised crime and its relationship with the QPS in such investigations. The Commission submits that its organised crime function is in accordance with that perceived by Fitzgerald and that its relationship with the QPS is appropriate given the Commission's role. Detailed discussion in respect of this myth is contained in Chapter 2, pp. 72-76.

THE COMMISSION ACTS LIKE A "BIG BROTHER"

Allegations that the Commission acts like a "big brother" centre mainly on the role of the Commission's Intelligence Division and concerns about operations and accountability in this area. The Commission recognises that public concerns about this function will never be totally removed; however it has taken steps to allay these fears by ensuring it remains fully accountable. This matter is addressed in detail in Chapter 3, pp. 100-102.

THE COMMISSION'S INTELLIGENCE FUNCTION DUPLICATES THAT OF THE QPS

From time to time the Commission is aware of allegations that the roles of the Commission's Intelligence Division and the QPS intelligence function involve a duplication of resources. This misconception is based on a misunderstanding of the separate yet complementary intelligence functions of the two organisations. These functions, together with the steps taken by the Commission to minimise duplication, are discussed in detail in Chapter 3, pp. 102-104.

THE COMMISSION'S CORRUPTION PREVENTION ACTIVITIES ARE UNDULY COSTLY

The Commission submits that there is no evidence to support such claims. For further details see Chapter 6, p. 164.

CHAPTER 10 – REVIEW OF RECOMMENDATIONS MADE IN PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE REPORTS NOS. 13 AND 18

INTRODUCTION

During 1991 the Committee conducted a major and thorough review of all aspects of the Commission's operations which culminated in Report No. 13[13]. In Part B of Report No. 13, the Committee made 43 specific recommendations:

- Seven recommendations (nos. 1-6 and 25) relating to the operation of the Committee; one (no. 6) would require an amendment to the Act.

- Twenty recommendations (nos. 7-15, 19, 23, 26, 29, 32, 34, 39-43) require specific amendment of the Act.

- Six recommendations (nos. 27, 28, 30-33) relate to procedural fairness in relation to the Commission's discharge of its functions and responsibilities (no. 32 also involves an amendment to the Act).

  Matters raised in these recommendations are addressed in the Commission's Policy and Procedures Manual for the Official Misconduct Division (Procedure for Public Hearings), which is Appendix I.

- The remaining ten recommendations (nos. 16-18, 21, 22, 24, 35, 36-38) concentrate on issues relating to the structure and functions of the Commission, including its responsibilities for co-ordination of law reform and justice research.

The Committee will appreciate that those recommendations relating to the operation of the Committee and requiring amendment of the Act must be implemented by persons other than the Commission, e.g. the legislative amendments must be introduced into and passed by the Legislative Assembly.

The Commission, in its 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), informed the inaugural Committee as

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[13] Legislative Assembly of Queensland, Parliamentary Criminal Justice Committee Review, *Review of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission, Report No. 13*, Government Printer, Brisbane, December 1991 [Report No. 13].

to the state of implementation of these recommendations. Reference is made to Chapter 2 of the Submission.

In the Committee's *Review of the Operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission*, pursuant to s. 4.8(1)(f) of the *Criminal Justice Act 1989-1992* (Report No. 18), it recognised at page 15 of Part C that the Commission had limited time to implement all of its recommendations relating to the Commission. However, it viewed with approval the fact that the Commission had implemented most of its recommendations. It expressly left it to future Parliamentary Committees to further assess the implementation of the recommendations in Report No. 13, in addition to the recommendations made in Report No. 18. It observed that these should be balanced with the attached submission from the Commission.

The Committee said that its recommendations should be kept under constant review and future committees needed to treat this as a priority. It said: 'This, however, is a matter on which the next Parliamentary Committee should specifically report by the end of 1993'.

It then made Recommendation 5:

> The Committee recommends that the next Parliamentary Criminal Justice Committee prepare a report to Parliament at the end of 1993 (or included in another report) on the implementation by the CJC of the Committee's recommendations in Report No. 13 and this report.

As no such report has been prepared to date, the present review under s. 118(1)(f) of the Act provides the opportunity for the Committee to report to Parliament on the implementation of the recommendations in Report Nos. 13 and 18. Accordingly, in this chapter, the Commission addresses this question in relation to each recommendation in those reports. In the following chapter, it will consider the amendment of the Act, both in relation to the implementation of the Committee's previous recommendations and further proposed amendments to the Act.

REPORT NO. 13

Recommendations 1-6 and 25 relate to the operation of the Committee; Recommendation 6 would require an amendment to the Act.

Recommendation 1

> ***The Committee recommends that the Standing Rules and Orders of the Legislative Assembly of Queensland be amended so that future Chairmen of the Criminal Justice Committee be responsible for all questions concerning the operations of the Criminal Justice Commission, except those that relate to its financing, for which the appropriate Minister is responsible. The questions to the Chairman should be on notice.***

Recommendation 2

> ***The Committee recommends that the Standing Rules and Orders of the Legislative Assembly of Queensland be amended so as to require that a report tabled by the Criminal Justice Committee be debated by the House if the Committee so recommends.***

Recommendation 3

> ***The Committee recommends that the Standing Rules and Orders of the Legislative Assembly of Queensland be amended so as to require the Government to respond to reports tabled in the House by the Parliamentary Criminal Justice Committee within three months.***

In the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), it observed at pages 30-31, that it did not consider that it was its role to engage in a detailed analysis of those recommendations in Report No. 13 which concerned the operation of the Committee. It did, however, refer aspects of its response to the then current Electoral and Administrative Review Commission Review of Parliamentary Committees. As noted at page 33 of the submission, in relation to Recommendation 6, which involved amendment of the Act, the Office of the Cabinet advised that any amendment concerning the Committee should await completion of this review of Parliamentary Committees.

The review of Parliamentary Committees was completed with the report of the Parliamentary Electoral and Administrative Review Committee in October 1993. To the best of the Commission's knowledge none of the recommendations concerning the Committee have been implemented subsequent to this review.

Recommendation 4

> ***The Committee recommends that members of parliamentary committees be permitted to devote significant time to their committee responsibilities and that regular and substantial time be allocated for the conduct of committees in the Queensland Parliament.***

The Commission refers to its commentary on Recommendations 1-3. In addition, it observes that the current Committee is best placed to determine whether this recommendation has been implemented.

Recommendation 5

> ***The Committee recommends that the staffing of the Committee be increased to three (3) persons, pending the completion of the EARC inquiry into the Queensland Parliamentary Committee system.***

The Commission refers to its commentary on Recommendations 1-3.

Recommendation 6

> ***The Committee recommends that an examination be made of the possibility of amending s. 4.4 of the Criminal Justice Act 1989-1991 to provide that the Parliamentary Criminal Justice Committee remains in office until a new committee is appointed by Motion of the Legislative Assembly upon sitting of the new Parliament.***

As previously observed, this is the one recommendation concerning the operation of the Committee that requires an amendment to the Act. The Commission supports this recommendation. However, it has not been implemented subsequent to the Parliamentary and Electoral Administrative Review Committee's report.

Recommendation 7

> ***The Committee recommends that the Criminal Justice Act 1989-1991 be amended to include as one of the objectives of the Act, as s. 1.3(a)(viii), the following words: "to review, and propose initiatives in relation to the reform of, the administration of criminal justice".***

This recommendation, which requires an amendment to the Act, has not been implemented.

In the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), at page 38 the Commission expressly supported this proposal. This remains the Commission's position.

The proposed wording was adapted by the Committee from what was then s. 2.14(a) [now s. 21(1)(a)] of the Act. That section is as follows:

> The Commission shall -
>
> (a) continually monitor, review, co-ordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice;

Upon reflection the Commission would prefer that s. 21(1)(a) be recast in the same terms as the Committee's proposal in respect of s. 1.3(a) [now s. 3(a)] of the Act.

This is because:

- The word 'monitor' in s. 21(1)(a) is superfluous. It adds nothing to 'review'. Any review by the Commission necessarily involves monitoring the activity under review.

- It is not appropriate or practical for the Commission to co-ordinate reform of the criminal justice system. The Commission considers that its statutory obligation should be that the Research and Co-ordination Division's activities are co-ordinated *with* those of other agencies to ensure that there is no duplication of effort.

- It is for the elected government to 'initiate' reform of the criminal justice system. The Commission's role cannot appropriately be more than 'to propose initiatives'. This has always been the approach adopted by the Commission. Unfortunately, the language of s. 21(1)(a) may have conveyed the erroneous impression to some that the Commission was seeking to usurp the role of government. This has often served to cloud the debate on criminal justice issues. The proposed amendment would make the Commission's true position abundantly clear and serve to focus the debate on issues of reform rather than the Commission's role.

- It is impractical for the Commission to discharge this function on a continuing basis given the wide range of functions currently vested in it by the Act. It does not have the resources to perform each of these functions and

responsibilities concurrently. It must of necessity possess a discretion to determine its priorities in relation to the discharge of these functions and responsibilities. The omission of 'continually' in conjunction with 'monitor' from s. 21(1)(a) would ensure that the Commission cannot be the subject of litigation with a view to a court ordering it to discharge a 'continuing' responsibility, notwithstanding its other commitments, as occurred in the *Boe v Criminal Justice Commission* (Appeal No. 319 of 1993). This would be enhanced by an associated amendment to clearly give the Commission a discretion to determine its priorities.

This is discussed in more detail in Chapter 5 in relation to the operation of the Research and Co-ordination Division, and in Chapter 11 in respect of further recommendations for amendment of the Act.

Recommendation 8

The Committee recommends that s. 2.13 of the Criminal Justice Act 1989-1991 be amended by adding a new sub-section (3) which provides that the Commission is a law enforcement agency in so far as it relates to the Divisions of the Commission which discharge the functions of investigation, intelligence and witness protection.

This recommendation, which requires an amendment to the Act, has not been implemented.

Recommendation 9

The Committee recommends that s 2.17(2) of the Criminal Justice Act 1989-1991 be amended as proposed by the Criminal Justice Commission, and that it be further amended by adding a paragraph (e) which would permit the Commission to engage a senior experienced legal practitioner in private practice to conduct hearings on behalf of the Commission.

The Commission's proposed amendment, which is referred to in this recommendation was that s. 2.17(2) be amended to enable a legally qualified Commissioner (other than the Chairperson) to constitute the Commission in his/her own right for the purposes of discharging the functions and responsibilities allocated to the OMD.

Both the Commission's proposal and the Committee's additional proposal were implemented by the *Criminal Justice Amendment Act 1993*, which commenced on 10

December 1993. When the Act was reprinted and renumbered as at 28 January 1994, s. 2.17(2) became s. 25(2).

Recommendation 10

> ***In order to clarify the Criminal Justice Commission's obligation to furnish reports under s. 2.18 of the Criminal Justice Act 1989-1991 the Committee endorses the recommendation of the Criminal Justice Commission to amend s. 2.18 to include a definition of "a report of the Commission" for the purpose of s. 2.18.***

This recommendation, which requires an amendment to the Act, has not been implemented.

The importance of this recommendation is to clearly define those reports to which s. 2.18 (now s. 26) of the Act relate, so that there can be no doubt what Commission reports are required to be tabled and printed, and to therefore enter the public domain.

The necessity for this amendment was emphasised by the argument for the defendants in *Criminal Justice Commission v. News Limited and King* (No. 27 of 1994) before Dowsett J in the Supreme Court of Queensland. The thrust of the submission was that ss. 21 and 23 provide the authority for the Commission to report to the Committee and require that it report only in accordance with s. 26. Such a report will, in due course, become public upon it being tabled and printed in accordance with the latter section. Reference was also made to s. 27 in support of this argument. As His Honour observed at page 24 of the judgment:

> This argument assumes that it is not open to the plaintiff to communicate with the Parliamentary Committee other than by a statutory report and that wherever the word "report" is used in the *Act*, it is used as a term of art having a specific meaning. The way the *Act* is drafted points very much in that direction, and the argument is not without appeal . . .

Although His Honour ultimately rejected the argument having regard to s. 132, which contemplates that the Commission may communicate information which is not to be immediately released in the public domain, his comments on the drafting of the Act underline the necessity to place the matter beyond all doubt by implementing the amendment which has been proposed by the Committee in Recommendation 10.

It is to be observed that the defendant's have advanced the same argument before the Court of Appeal in respect of the Commission's appeal from the order of Dowsett J in that case. The court has reserved its decision.

Recommendation 11

> ***The Committee endorses the recommendation of the Criminal Justice Commission that s. 2.20(2) and s. 2.29 of the Criminal Justice Act 1989-1991 be amended to remove the duplication of investigations and reports which is required of the Complaints Section of the Official Misconduct Division and the Director of the Official Misconduct Division by ss. 2.20 and 2.29 of the Act. The Committee also endorses the recommendation of the Commission that s. 2.29 of the Act be amended to remove the requirement that the Commission investigate all complaints that it receives.***

As indicated at pages 36-37 of the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), this recommendation was implemented by the Criminal Justice Act 1992 (commenced on 13 May 1992). The Act was reprinted and renumbered as at 28 January 1994. The relevant amendments have been made to what is now s. 29(3) of the Act.

Recommendation 12

> ***The Committee endorses the recommendation of the Criminal Justice Commission that s. 2.20(2) of the Criminal Justice Act 1989-1991 be amended by adding to the functions of the Official Misconduct Division the function "to investigate organised and major crime".***

Although s. 2.20(2) (now s. 29(2)) of the Act was amended to effect the proposal in Recommendation 11, the further amendments to that provision by Recommendation 12 have not been implemented.

Recommendation 13

> ***The Committee recommends that s. 2.24(1)(a) of the Criminal Justice Act 1989-1991 be amended to provide as follows:***
>
> > ***(1) The Director of the Official Misconduct Division shall report on -***

> *(a) every investigation carried out by the Division other than trivial or purely disciplinary matters.*
>
> *The Committee further recommends that sub-section (3) of s. 2.24 be deleted and replaced by a new sub-section (3)(i) in the terms proposed by the Commission and that a sub-section (3)(ii) be added which provides as follows:*
>
> > *(3)(ii) In relation to a report under subsection(3)(i) the Director of Prosecutions may require further information and in any such case the Director of the Official Misconduct Division shall provide the information.*

As indicated at page 37 of the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), s. 2.24(1)(a) was amended by the *Criminal Justice Amendment Act 1992* (which commenced on 13 May 1992) to remove unnecessary duplication of reporting by the Complaints Section and the Official Misconduct Division. Although this amendment was not in the same terms as that proposed by the Committee in the first aspect of the recommendation, it achieved the same effect.

The second aspect of the recommendation has not been implemented. This aspect was proposed by the Committee and not the Commission. As set out at page 39 of the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992), the Commission is concerned that there may be some unforeseen and difficult circumstances if the recommendation by the Committee is adopted. The Commission's specific concerns are also set out at that page.

Recommendation 14

> *In order to ensure that the function of the Research and Co-ordination Division of the Criminal Justice Commission in relation to "prevention of crime" is not restricted to Police Service programs but is a general function of the Commission, the Committee recommends that s. 2.45(2)(f)(iii) be moved to paragraph (d) of s. 2.45(2) and be numbered sub-paragraph (iii).*

This recommendation, which requires an amendment to the Act, has not been implemented.

The Commission supports the recommendation. It observes that s. 2.45(2) is now s. 56(3) of the Act.

Recommendation 15

> ***The Committee recommends that the words "and each of those departments of government of the State shall inform the Division of their activities and shall liaise with and co-ordinate its activities with the Division" be added to s. 2.46(1) of the Criminal Justice Act 1989-1991 to permit the Criminal Justice Commission to co-ordinate criminal justice reforms.***

This recommendation, which requires an amendment to the Act, has not been implemented.

However, the Commission does not consider such an amendment to be necessary. As stated in relation to Recommendation 7, the Commission does not consider it appropriate or practical for it to co-ordinate criminal justice reforms. In its view, its statutory obligation should be that the Research and Co-ordination Division's activities are co-ordinated *with* those of other agencies to ensure that there is no duplication of effort.

The Commission is unable to provide the Research and Co-ordination Division with significant additional resources. It must operate within a budget and with due regard to a staff level approved by its Minister. It is difficult to adjust this balance without detrimentally affecting the other Commission Divisions, which are also statutorily required to discharge significant functions.

It is considered that the role of the Research and Co-ordination Division would be enhanced if the Act were amended to:

- more precisely focus its functions
- remove the obligation to discharge many of its functions on a continuing basis
- to vest it with a discretion to determine its priorities.

Such amendments would enable the Division to more accurately plan its projects and allocate staff to them, rather than being required, by the manner in which the Act is currently drafted, to take on additional projects because of external factors such as litigation with a view to compelling it to perform certain functions.

Further, this co-ordination role is sufficiently discharged through the Inter-Agency Forum on Law Reform which was established by the Office of the Cabinet following the Commission's suggestion. The Inter-Agency Forum maintains an up-to-date register of law reform projects and meets regularly. The Director of the Research and Co-ordination Division or his delegate always attends these meetings. In addition, the Division consults through other informal communication with criminal justice agencies to ensure that there is no duplication of effort in this area.

Reference is also made to Chapter 5 in relation to the Research and Co-ordination Division in which the following issues are specifically addressed:

- Setting the Division's Focus.
- Does the Division Lack Focus?

Recommendation 16

> ***Because the issues of police involvement in illegal drugs and the fabrication of evidence were central to the Commission of Inquiry's attention, the Committee recommends that the Criminal Justice Commission conduct investigations into police involvement in illegal drugs and the fabrication of evidence and prepare reports for presentation to the Government and Parliament.***

With respect to police involvement in illegal drugs, the Commission continues to treat allegations of this nature with the utmost seriousness and conducts its investigations accordingly. However, allegations of sufficient substance to warrant an investigation are mostly disparate in time and location so as to make it impractical for the Commission to form the global view which would be required to prepare a meaningful report of the nature that it understands the Committee envisaged in making the recommendation.

As the Commission advised at page 19 of the 1992/93 Annual Report, it was advised of alleged police involvement in property and drug offences in South-East Queensland. After preliminary inquiries a special team was formed with the QPS to investigate. This was headed by the Commission's Director of Operations. This illustrates the degree of seriousness the Commission attaches to these allegations, particularly when they may be indicative of more wide-spread corruption. It would be improper to report in more detail on this operation at this time because charges are still pending before the courts.

The Commission notes that, where allegations are not of sufficient substance to proceed immediately by way of investigation, it refers them to the Intelligence Division, pending receipt of better information.

In addition, the Commission initiated an audit of in excess of 70 Queensland police stations which focused on whether appropriate systems and procedures exist for the handling of drug exhibits. The results of these audits are analysed by the QPS Inspectorate. The results of any suspected misconduct identified by the Inspectorate are referred to the Complaints Section in accordance with the Act. However, to date there have been no general conclusions upon which the Commission can report.

The position is similar in relation to alleged fabrication of evidence. The allegations received by the Commission are too ad hoc to provide a basis for a meaningful report presenting a global view of these allegations. As observed in Chapter 2 in relation to police verballing (see pp. 12-14), the incidence of verballing, in particular, the manufacture or falsification of evidence has significantly reduced.

At page 62 of the 'Submission on the Three-Year Review of the Commission's Activities' (August 1992), reference is made to some 80 matters held by the Attorney-General's Department which require assessment by the Remediation of Miscarriage of Justice Unit or a body appointed in its stead. The Minister for Justice and Attorney-General has subsequently made public that a unit was formed in his department in 1992 to review all verballing allegations prior to the commencement of the Commission on 22 April 1990. He stated that there were 78 such cases which were reviewed and found not to fit the criteria spelt out at page 386 of the Fitzgerald Report. He further said that complaints arising since the establishment of the Commission are dealt with by the Commission.

As the Committee will be aware, the Commission has no jurisdiction to review convictions as such. Its jurisdiction is to investigate alleged or suspected misconduct by QPS members. In certain cases, however, such an investigation may ultimately have the effect of establishing that a person has been wrongly convicted.

The Commission's guidelines issued under the Act include *not* investigating matters pre-dating 22 April 1990, otherwise than in exceptional circumstances.

Recommendation 17

> ***The Committee recommends that the Criminal Justice Commission acknowledge the primacy of the role of the Research and Co-ordination Division in reviewing criminal laws and criminal justice administration and***

> ***provide to the Division sufficient resources to enable the Division to undertake the research that the Fitzgerald Report recommended be done in order to face the problems that confront Queensland today.***

The Commission recognises the important role of the Research and Co-ordination Division. However, as indicated in relation to earlier recommendations, the Commission does not consider it appropriate or practical for the Division to co-ordinate criminal justice reform as opposed to co-ordinating *with* other agencies in respect of it. Reference is particularly made to the comments in respect of Recommendation 15.

Recommendation 18

> ***The Committee recommends that the integrity of the Criminal Justice Commission requires that it be maintained in its current form until such time as it is shown that its divisions acting independently can fulfil their overall responsibilities more effectively and efficiently than they do as one organisation, and until such time as the work of any of the divisions is appropriately transferred to other agencies or is no longer required.***

This recommendation must be considered with the Committee's later Recommendation 6 in Report No. 18. Recommendation 6 is as follows:

> The Committee recommends that the next Parliamentary Committee prepare a detailed report for the Parliament at the end of 1994 or the beginning of 1995 on the future direction of the Commission and the future of its various Divisions. Such an evaluation would include the desirability of a sunset clause.

Each of these recommendations is addressed later in this Chapter in relation to Report No. 18.

Recommendation 19

> ***The Committee endorses the recommendation of the Criminal Justice Commission to amend s. 3.1 of the Criminal Justice Act 1989-1991 to require a person who provides information to the Commission to swear to the truth of that information in writing, but recommends caution where informants are under some form of disability.***

This recommendation, which requires an amendment to the Act, has not been implemented.

Recommendation 20

> ***The Committee endorses the recommendation of the Criminal Justice Commission to amend s. 3.3 of the Criminal Justice Act 1989-1991 by removing the provisions which apply to an offence, thus making available the power to apply for search warrants in cases of suspected official misconduct as well as to suspected breaches of the law.***

This recommendation, which requires an amendment to the Act, has not been implemented.

Recommendation 21

> ***The Committee recommends that the Criminal Justice Commission conduct a review of the implementation of the recommendations of the Report of the Commission of Inquiry, so far as they relate to the Police Service, and a review of all other reforms in the Police Service, and that the review be tabled in Parliament as a report of the Criminal Justice Commission. The Committee also recommends that a similar review of the Police Service, considering all matters relevant to the structure, staffing, education, powers, procedures and attitudes of the Police Service be conducted by the CJC every three years thereafter for the benefit of Parliament and the people of Queensland.***

This recommendation must be considered with the Committee's later Recommendation 7 in Report No. 18 which is as follows:

> The Committee recommends that the CJC prepare a detailed report to Parliament, no later than April 1993, containing a full assessment of the ongoing success of the reforms of the Queensland Police Service to date and that this be carried out on an annual basis until the Parliamentary Committee and the Commission determine it is no longer appropriate.

Each of these recommendations are addressed later in this Chapter in relation to Report No. 18.

Recommendation 22

> ***The Committee recommends that after the tabling in Parliament each year of the Annual Report of the Queensland Police Service, the Criminal Justice***

Commission prepare and table a report to Parliament which critically examines the Annual Report.

As the Committee will be aware, the Commission prepared and provided a confidential report to the Committee and the QPS on the 1991/92 QPS Annual Report and Statistical Review. It also played an active role through the Research and Co-ordination Division in reading and providing comment to the QPS on drafts of its proposed 1992/93 Annual Report. However, it considers the confidential approach that it has adopted to date, and in particular the provision of comment directly to the QPS, to be as a more constructive approach than a public report.

Further, the Commission's soon to be released report on the implementation of the Fitzgerald recommendations in respect of the QPS will refer to aspects of previous Annual Reports.

The Division has also participated in preliminary planning for the 1993/94 QPS Annual Report.

Recommendation 23

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

As the Committee will be aware, on 28 July 1992, its predecessor published its Report No. 17 on 'The Committee's Recommendations on Changes to the Method of Appointment and Conditions of Service of Members of the Misconduct Tribunals'. At pages 019-020 of this report, the Committee proposed a model for replacement of the existing Misconduct Tribunals. The Commission's submission to the Committee on this matter, 'Misconduct Tribunal – Future Structure and Operation' (July 1992) is appended at pages 022-047 of Report No. 17. The Commission understood that its submission was endorsed by the Committee except where otherwise indicated.

Subsequently the Inter-Departmental Working Group on the amendment of the Act directed particular attention to the position of the Tribunals. In November 1993, the

Commission was advised that the Tribunals should be removed from the Commission and transferred by appropriate legislation to the District Court. Members of the Working Group have consulted with the Commission, the Litigation Reform Commission and the Chief Judge of the District Court with a view to developing the necessary legislation, rules and procedures. The Commission provided its comments on Drafting Instructions for the legislation and the Rules of Courts as recently as June 1994.

The Commission has been advised by the Minister for Justice and Attorney-General that it is unlikely that the transfer of jurisdiction will take place until August or September 1994 at the earliest. At his suggestion, the Commission has budgeted for a full year of operation of the Tribunals.

For completeness it is noted that the Electoral and Administrative Review Commission 'Report on Review of Appeals from Administrative Decisions' (1993) recommended the Misconduct Tribunals remain with the Commission and separate from its proposed general administrative review body to be called the Queensland Independent Commission for Administrative Review. The subsequent events referred to above have clearly overtaken this recommendation.

Recommendation 24

> ***The Committee recommends that the Criminal Justice Commission conduct a study of how the recommendations of the Royal Commission into Aboriginal Deaths in Custody can be implemented in Queensland.***

The Commission understands that this study has been taken up by the Queensland Government. Because of the number of different agencies involved in the implementation of the Royal Commission's recommendations, the Commission considers that it is appropriate that the study be undertaken by the Government. Further, the Commission does not have resources to divert from other priorities in the discharge of its statutory functions and responsibilities, in order to undertake such a study.

Recommendation 25

> ***The Committee recommends to the Parliamentary Service Commission that an induction program for future members of the Parliamentary Criminal Justice Committee be developed as soon as possible.***

The Commission refers to its commentary on Recommendations 1-3, which also concerns the operation of the Committee.

Recommendation 26

> ***To facilitate openness the Committee recommends that consideration be given to adopting a more positive confidentiality provision in the Criminal Justice Act that would conform with the following rule:***
>
> > ***A Commissioner, Member of Committee, officer of the Commission or employees of the Parliamentary Service Commission and any other who consults with or is engaged by the Commission or Committee whether for monetary gain or otherwise, is authorised to disclose information obtained in office or in the course of their duties with or on behalf of the Commission or Committee:***
> >
> > ***(a) if the disclosure is required to be made as part of the officer's official duties;***
> > ***(b) if the disclosure is made with the permission of another officer who is reasonably believed to have lawful authority to give that permission;***
> > ***(c) if the disclosure is <u>not</u> of information the disclosure of which could possibly prejudice the operations of the Commission;***
> > ***(d) if the disclosure is <u>not</u> of information concerning the private, personal, business, or other affairs of any person, group or body in the community the disclosure of which could possibly prejudice the interests of that person, group or body.***
>
> ***Subject to the addition of the further requirements that the rule is applicable to all persons, past and present, who have received information from the Commission or Committee, or for or on behalf of the Commission or Committee in the course of their duties with the Commission or Committee and subject to the preparation of guidelines to assist officers in the determination of when and to whom information should be disclosed.***

As indicated at pages 39-41 of the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission Activities' (August 1992), this recommendation was different from its proposal to amend the then s. 6.7 of the Act (now s. 132), and was a matter of real concern to the Commission because it would

potentially expose it to a number of negative ramifications at various levels of its operations. For reasons there set out, it submitted that the recommendation would be unenforceable.

As also indicated, as a result of meetings between the inaugural Committee's Chairperson, the Committee's Research Director, Parliamentary Counsel and the Commission's General Counsel, agreement was reached as to the philosophy which should govern the drafting of the proposed new confidentiality provision. This was communicated to the Office of the Cabinet.

However to date the new s. 132, which was inserted by the *Criminal Justice Amendment Act 1993*, only partially reflects the agreed amendment. That is, the extension of the provision to cover former Commissioners and officers of the Commission and persons who have been engaged under s. 66 of the Act to provide services, information or advice to the Commission (both past and present). In addition to giving rise to problems of interpretation for the courts, the new provision does not extend the requirement of confidentiality to '*all* persons, past and present, who have received information from the Commission or Committee, or for or on behalf of the Commission or Committee in the course of their duties with the Commission or the Committee as recommended by the Committee' [emphasis added]. In particular, as the Committee Chairman noted in his speech on the second reading of the Amendment Bill, the proposed new section was defective in not extending the obligation of confidentiality to staff used by the Committee. The Commission agrees with this view. It is pleased to note that the Committee Chairman went on to say that he had discussed the matter with the Minister for Justice and Attorney-General who intended to include it sometime in 1994. The Commission trusts that this matter will be addressed by legislative amendment at the earliest opportunity.

Recommendation 27

> ***The Committee recommends that the current Criminal Justice Commission guidelines in relation to the acceptance of hearsay evidence be amended to include a provision to the effect that the Commission ought, as far as possible, avoid receiving evidence in a public hearing, where such evidence derives from an untested source or where the Commission has doubts as to its reliability and where there is no likelihood of corroboration.***

This recommendation has been implemented by the Commission in its guidelines for ensuring procedural fairness in the discharge of its functions (see Appendix I). This is contained in the Commission's Policy and Procedures Manual for the Official

Misconduct Division. Reference is made to paragraph 6 of its Procedures for Public Hearings:

- Where possible, the Commission will undertake a sifting of evidence before it is led in the course of a public hearing.

Reference is also made to the Commission's response to Recommendation 30.

Recommendation 28

> ***The Committee recommends that a list of criteria to govern the Criminal Justice Commission's use of suppression orders along the lines referred to in the guidelines prepared by the Independent Commission Against Corruption, be produced and included in the current guidelines of the Criminal Justice Commission.***

This recommendation has been implemented by the Commission as seen in Appendix I. Reference is made to paragraph 14 of its Procedures for Public Hearings in which there is a list of considerations to be taken into account in determining whether evidence should be suppressed. It is made clear that the list is not exhaustive.

In addition, the Commission's powers under s. 3.20 (now s. 88 of the Act) have been extended by the implementation of Recommendation 29.

Recommendation 29

> ***The Committee endorses the recommendation of the Criminal Justice Commission that s. 3.20 of the Criminal Justice Act 1989-1991 be repealed and replaced by a new s. 3.20 in the terms suggested by the Commission as follows:***
>
> ***The Commission may direct that-***
> ***(a)*** ***any evidence given before it; or***
> ***(b)*** ***the contents or summary of any record, or a description of any thing produced to the Commission or seized under a warrant issued under the Act; or***
> ***(c)*** ***any information that might enable a person who has given or may be about to give evidence before the Commission to be identified; or***

> *(d) the fact that any person has given or may be about to give evidence at a hearing, shall not be published if, in its opinion, publication thereof would be unfair or contrary to the public interest.*

This recommendation was implemented by the *Criminal Justice Amendment Act 1993* on 10 December 1993. As indicated above, s. 3.20 is now s. 88 of the Act.

Recommendation 30

> ***The Committee recommends that wherever possible the Criminal Justice Commission should thoroughly scrutinise every allegation before it is given a public airing.***
>
> ***It is suggested that this may be done through examination by existing multi-disciplinary teams and through internal reports. In circumstances where it is found that there is no substance to the allegations, or that they are vexatious, fanciful or without merit then they should not be raised at a public hearing. This principle should apply in particular where uncorroborated allegations are made. Further, whether or not a public hearing is conducted, where allegations are found to be without substance there should be a clear statement to that effect in any subsequent public report by the Commission.***

This recommendation has been implemented by the Commission. Paragraph 6 of its Procedures for Public Hearings (Appendix I) reflects this. As indicated in respect of Recommendation 27, this provides that:

> Where possible, the Commission will undertake a sifting of the evidence before it is led in the course of a public hearing.

This involves the thorough scrutinising of the allegations as recommended by the Committee.

In addition the Committee's proposal has been reinforced by the *Criminal Justice Amendment Act 1992* which commenced on 13 May 1992. By virtue of that amendment, s. 38 (formerly s. 2.29) of the Act provides:

> (2) The Complaints Section must not investigate a complaint or information if, in the opinion of the chief officer of the Section -
>
> (a) the complaint or information is frivolous or vexatious; or

(b) in the case of a complaint or information from an anonymous source - the complaint or information lacks substance or credibility.

Further, it is the practice of the Commission in its public reports to clearly identify any allegation which is without substance. Reference is made to the recent *Report by the Honourable R H Matthews QC on His Investigation Into the Allegations of Lorelle Anne Saunders Concerning the Circumstances Surrounding Her Being Charged with Criminal Offences in 1982, and Related Matters* (April 1994) in which this clearly emerges from the narrative.

Recommendation 31

The Committee endorses the submission of the Queensland Council for Civil Liberties as providing an acceptable guideline on the question of notice to persons against whom allegations are made. The Council submitted that:

The CJC should give a person against whom an allegation is to be made notice of that allegation, and that such notice:

(a) be formulated with sufficient particularity to apprise the person to whom it is given of the precise nature of the allegation being made;

(b) be given in sufficient time to enable that person to effectively respond to it, namely sufficient time to gather evidence and to enlist the services of a trade union representative, lawyer, or other source of assistance.

It is further recommended that the above guidelines be adopted in relation to closed hearings also, so that the person concerned may adequately prepare their defence to the allegations or charges against them.

As the Commission advised at page 43 of its 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992) it had already adopted the first part of the recommendation (see paras 2, 4 and 5 of the Procedures for Public Hearings at Appendix I). However as expressed at pages 43-44 of that submission in relation to private hearings, it cannot as a rule provide a notice to the person against whom the allegations are made. The Commission reminds the Committee of the reasons it advanced:

- Many private hearings are in the nature of investigative hearings, i.e., evidence is being sought from a witness so that further investigation can ensue. Sometimes the witness giving the evidence is being questioned under oath to minimise the possibility of false accusations being made. At other times the person being questioned is an informant whose identity needs to be protected. To forewarn the person against whom the allegations are made of the evidence to be given and the name of the person who is to give the evidence could lead to the frustration of the investigative process, could cause the person against whom the allegations are made to commence 'damage control' (i.e., concoct an alibi or an incorrect explanation, destroy, mutilate or conceal potential evidence) and may subject the informant or person giving the evidence to the risk of physical harm or other victimisation. For the Commission to be required to provide notices in these instances would be to frustrate one of the Commission's most valuable investigative tools.

- The CJC, especially in the conduct of its public hearings resembles a permanent Royal Commission. But it also conducts investigations into a wide range of matters. In some cases, such as public hearings of a Royal Commission, the requirements of procedural fairness normally would enable a party to cross-examine an accuser. But in the case of a body carrying out investigations, the requirements of procedural fairness usually would not extend to allow cross-examination, but would be satisfied by according an affected individual the opportunity to respond to the provisional conclusions of the body and to produce relevant evidence in order to refute allegations.

The Commission's approach has subsequently been supported by the decision of Derrington J in *Re: An Application under the Criminal Justice Act* (Q.L.R. 2/7/94) in the Supreme Court of Queensland on 17 September 1993. His Honour decided that the Commission was entitled to exclude the person who was the subject of its investigations, both personally and through legal representatives, from the examination of other witnesses as part of its investigation. He made these decisions because, in his view, the applicant was not entitled to be present at all, whether in person or through some representatives. In His Honour's view, this exclusion is justified by 'the general purpose of the Act and the power of investigation reposed by it in the Commission'. In the course of the judgment, Derrington J said:

> The purpose behind this closed session is to exclude other persons, including a concerned person, so that the Commission may properly perform its function of investigation.

This decision is an illustration of the application of the principle established by the decision of the Court of Appeal in *Re: Whiting* (Q.L.R. 4/9/93) on 8 April 1993 that

the Commission has an implied power to control its own process so as to prevent its proceedings being prejudiced.

Derrington J also stated that once the reason for exclusion from the investigative hearing ceased to exist, the applicant's 'rights to natural justice should be restored to permit him to have the opportunity of knowing and meeting and testing any such evidence that may have been received by the Commission during the time of his exclusion'. This was said in the context of any evidence which may be relevant to a conclusion that would lead the Commission to make an adverse report in relation to the person who is the subject of the allegations.

The Committee's attention is also drawn to that part of Appendix I which concerns Private Hearing procedures as follows:

> Where it has been determined that a private hearing is preferable, the procedures will follow as closely as possible those for public hearings.

Recommendation 32

> ***The Committee makes the following recommendation in order to achieve greater clarity in the Criminal Justice Act 1989-1991 and to ensure that the obligations on the Commission to act independently, impartially and fairly extends to the exercise by the Commission of all its functions.***
>
> ***The Committee recommends that s. 3.21(1) of the Criminal Justice Act 1989-1991 be redrafted in a manner which separates the issue of procedure from the issue of the applicability of the rules of evidence. The Committee recommends that s. 3.21(1) be replaced with a new s. 3.21(1) in the following terms:***
>
> *3.21 Commission not bound by rules or practice. (1) In the discharge by the Commission of its functions and responsibilities or in the exercise of its powers or authorities:*
>
> *(a) the Commission is not bound by the rules or the practice of any court or tribunal as to matters of procedure and may subject to this Act and to any other enactment, conduct its proceedings as it thinks proper; and*

(b) the Commission is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

The Committee further recommends that the provision currently found in s. 3.21(2)(a) be renumbered and inserted as paragraph (c) in s. 2.14(1) (in Part II, Div 3) after the words "In discharging its functions the Commission shall..".

The Committee also recommends that the word "proceedings" in s. 2.10 be changed to the word "meetings".

This recommendation has been implemented by the *Criminal Justice Act Amendment Act 1993* (which commenced on 10 December 1993).

The proposal in relation to s. 3.21(2)(a) has been implemented in s. 22 of the Act. Although the proposal was not effected in the precise manner recommended by the Committee, the amendment achieves the Committee's intention.

The recommendation in relation to s. 3.21(1) has been implemented by s. 92(1) of the Act.

S. 2.10 (now s. 16) of the Act has been amended by including the word 'Meetings' in the heading to the section.

Recommendation 33

The Committee recommends that as a matter of practice the Criminal Justice Commission should in investigations which culminate in a public report and in which individuals are likely to be singled out, give notice to affected persons of allegations likely to be made against them and provide them with the opportunity to be heard (in the sense of an opportunity to respond) in relation to those allegations before the report is published.

This recommendation has been implemented by the Commission. General Counsel, the Commission's senior legal adviser ensures that before any report is published, procedural fairness has been afforded to those persons to be mentioned adversely in the report. Therefore, no report will be permitted to be published when a person or an entity is adversely referred to in that report unless that person or entity has had the opportunity to respond to the adverse reference. In addition, one other Commission

lawyer considers each public report of the Commission with a view to ensuring that the principles of procedural fairness are complied with.

In respect of public hearings, paragraphs 4 and 5 of the Commission's Hearing Procedures (Appendix I) will in general provide for a person who may be the subject of an adverse finding or allegation the opportunity to respond to it and cross examine the person making it. In practice all such persons are given an appropriate opportunity to make submissions in respect of the evidence given. Procedural fairness is further ensured by the stature of the persons who have presided at the Commission's hearings. Since December 1991, these persons have included former Supreme Court judges, the Honourable W.J. Carter QC, the Honourable R.H. Matthews QC and the Honourable D.G. Stewart (also a former head of the NCA) and part-time member of the Commission, Mr L.F. Wyvill QC (a former Commissioner of the Royal Commission into Aboriginal Deaths in Custody).

In respect of private hearings in the consideration of Recommendation 31, reference has been made to the observations of Derrington J in respect to what is required to provide natural justice to a person against whom an adverse report might be made.

Recommendation 34

The Committee endorses the recommendation of the Criminal Justice Commission that s. 2.19(2) of the Criminal Justice Act 1989-1991 be amended so that confidential information which is not disclosed in a Commission report (as permitted by s. 2.19(2)(b) of the Act) may nonetheless be disclosed to the Committee and where appropriate to the Minister. The amendment is achieved by the addition of a new paragraph (c) as follows:

(c) where the Commission makes a report in accordance with paragraph (b) of this subsection it -

(i) may disclose that information to the -

(a) Parliamentary Committee; and

(b) if the Committee or the Commission so determines to the Minister; and

(ii) any such disclosure, shall be deemed not to be a report or part of the report for the purposes of s. 2.18 of the Act.

The Committee further recommends that subsection (3) be added to s. 2.19 as follows:

(3) It is an offence against this Act for any person who receives information from the Commission pursuant to subsection (2) to wilfully disclose such information except where such disclosure is in discharge of a function under the Act.

This recommendation, which requires an amendment to the Act, has not been implemented.

Recommendation 35

The Committee recommends that the Commonwealth Parliamentary Estimates Committee model should be adopted as a means of review by this Committee of the Criminal Justice Commission's expenditure. Under this model the Commission would provide an "expenditure plan" to the Committee and would then attempt to justify the estimates by reference to past performance. The Committee would then be better able to monitor the financial performance of the Commission and make recommendations in relation to the expenditure plan.

This recommendation has been overtaken by a resolution of the Legislative Assembly establishing an Estimates Committee on 28 April 1994. Each Committee is allocated responsibility for examining and reporting on expenditures contained in the Appropriation Bills concerning organisational units with a group of Ministerial portfolios. As previously indicated, the Minister for Justice and Attorney-General has an administrative responsibility for the Commission. The Commission's proposed expenditure for 1993/94 has been scrutinised by the Estimates Committee as part of this process.

Recommendation 36

The Committee recommends that the Commission prepare a report to follow up its Crime and Justice Report which will make use of the statistical information collected in that first report, in order to identify areas in the

criminal justice sphere which require improved service delivery and to suggest methods of reform in those cases.

The Commission has not been able to implement this recommendation to date because it does not have the resources to divert from other priorities in the discharge of its statutory responsibilities, in order to do so. However, the Commission's present research project under s. 23(c) of the Act in respect of the sufficiency of funding for criminal justice agencies, including the Director of Prosecutions and the Legal Aid Commission, will assist to address some of those issues.

The Commission does aim to issue a follow-up report. It also intends to issue further short research papers on various aspects of the criminal justice system similar to 'Murder in Queensland' (February 1994). These will also fulfil the role of the Crime and Justice Report.

Recommendation 37

The Committee recommends that the Research and Co-ordination Division of the Criminal Justice Commission should be given responsibility for the Criminal Justice Database when it becomes operational and its right to collect information from other criminal justice agencies should be guaranteed by legislative provision in terms similar to s. 19 draft Criminal Justice (Boards) Bill (Vic).

The Commission would require to allocate additional staff to the Research and Co-ordination Division to discharge this responsibility. For the same reasons articulated in respect of Recommendations 15 and 17, this is not an option at present. It would also require considerable re-orientation of the Division's role, including the provision of necessary legislative powers. However, there is no reason why this cannot be undertaken by the Government Statistician's Office (GSO) provided it remains independent of the agencies from which the information is collected. It may make more sense to allocate these more technical responsibilities to the GSO, and leave the Division free to act as an interpreter and user of statistics. The Director of the Research and Co-ordination Division has consulted with the GSO in relation to the establishment of such a database. This matter has been discussed in more detail at Chapter 5 of this submission in relation to the operation of the Research and Co-ordination Division.

Recommendation 38

> ***The Committee recommends that the Criminal Justice Commission conducts an assessment of the resources of its media and information section, how it is operating, and the subsequent reporting of criminal justice issues in Queensland, and tables a report of its investigation in the Parliament, so that members can be aware of how effective this part of the Commission's operations are working.***

The Commission's response to this recommendation is set out at pages 57-58 of the 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992). In addition, the Commission has recently addressed the continued need for a media liaison officer in its 'Supplementary Submission to the Parliamentary Criminal Justice Committee in Relation to its Inquiry Relating to the November 1993 PCJC Report' (see pp. 38-44).

Recommendation 39

> ***The Committee endorses the recommendation of the Criminal Justice Commission to amend the Criminal Justice Act 1989-1991 to substitute "Chairperson" for "Chairman" and generally to introduce gender neutral terms in the Act.***

This recommendation was implemented by the *Criminal Justice Amendment Act 1993*.

Recommendation 40

> ***The Committee endorses the recommendation of the Criminal Justice Commission that s. 1.4 of the Criminal Justice Act 1989-1991 be amended by including in the definition of "unit of public administration" the Queensland Corrective Services Commission, so that the Act applies to the Corrective Services Commission.***

The Commission refers to its comments concerning this recommendation at pages 41-42 of its 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992). In particular it refers to the concluding paragraph:

> In communications with the Office of the Cabinet, the Commission has advised that the addition of the new paragraphs (j) and (k) are now considered to be the preferable mechanism for including units such as the Queensland Corrective Services Commission as "units of public administration".

The Commission has recently confirmed this position in response to an inquiry from the Inter-Departmental Working Group, which is considering the proposed amendments to the Act.

The primary concern that the Commission has in relation to the specific inclusion of the Queensland Corrective Services Commission as a unit of public administration, relates to the special needs and difficulties associated with the investigation of complaints of official misconduct within the State's prisons.

These needs and difficulties are:

- The Commission's compulsory powers are substantially nullified by the prison environment. The hierarchy among serving prisoners largely centres upon gangs or groups led or influenced by long-term, violent and hardened criminals. Hardened criminals serving long terms of imprisonment are not persuaded to tell the truth by the mere threat of an additional short term of imprisonment if they are found in contempt of the Commission.

- Effective investigation of crimes committed in prison require an understanding of prison practices, procedures and methodologies. Investing the Commission with jurisdiction whereby it would operate from afar would deny investigators the necessary experience and expertise to successfully undertake such investigations. The current arrangements whereby investigations within the prison system are undertaken by a specialist unit composed of QPS members should not lightly be put aside.

- The necessary experience and expertise also presupposes a knowledge of who is who in the prison system, that is, who are the "top dogs" among the prisoners and who are the suspect prison officers. Such knowledge could only be gained from an intimate knowledge of the prison system stemming from the co-location of investigators and the ability to "plug into" prison intelligence both formally through the prison intelligence service and informally through recruiting confidential informants among prisoners and prison officers.

  To disband the present arrangements whereby such a specialist investigative unit exists and is reasonably effective in discharging its responsibilities and to replace that facility with the Commission with its many competing demands, without prison expertise and located at a distance would, in the Commission's strong view, act to the substantial prejudice of the investigation of official misconduct within the prison system.

Recommendation 41

> ***The Committee recommends that the heading of Part II Division 1 of the Criminal Justice Act 1989-1991 - "Establishment of Commission" be deleted and replaced with the words "Membership of Commission" to accommodate the full meaning of the provisions in Part II Division 1 which relate to the constitution of the Commission Board.***

This recommendation was implemented by the *Criminal Justice Amendment Act 1993* to the extent that what is now Part 2 Division 1 has the heading 'Establishment and Membership of Commission'.

Recommendation 42

> ***The Committee recommends that in the event that the Criminal Code Review Committee recommendation for the abolition of the term "misdemeanour" as a category of criminal offence is implemented, the sections in the Criminal Justice Act 1989-1991 which specify an offence under the Act as a misdemeanour be amended by substituting "simple offence" for misdemeanour.***

The recommendations of the Criminal Code Review Committee have not been implemented. It is understood that they remain under consideration.

Recommendation 43

> ***The Committee recommends that the Criminal Justice Act 1989-1991 and the incorporated amendments as proposed by the Criminal Justice Commission be written in simple English where possible, using a clear format, and be available on computer disk for ease of public access and information.***

The amendments which were made by the *Criminal Justice Amendment Act 1993* were written in simple English consistent with current legislative drafting practice. When the Act was reprinted as at 28 January 1994, further aspects were expressed in this manner. The Commission trusts that this process will be completed when the Act is further amended. The Act is currently available on computer disk.

REPORT NO. 18

Recommendation 1

> ***The Committee recommends to the CJC that, where appropriate, it use case studies/reports to the Parliament as part of its strategy for the prevention of official misconduct and to educate for improved standards of behaviour.***

In Report No. 18 the Committee expressed the view that case studies such as those in *Complaints against Local Government Authorities in Queensland – Six Case Studies* (July 1991) are a model way to highlight problems and recommend appropriate changes. The text accompanying the recommendation was that, '*where possible* . . . this process be followed by the CJC in future' [emphasis added] (see Report No. 18, p.7).

In accordance with this recommendation the Commission is in the process of preparing a second volume of local government case studies. Its Report on *An Investigation into Complaints Against Six Aboriginal and Island Councils* (June 1994) also presents case studies to illustrate the unique problems associated with these Councils. These reports by their very nature require that an overview be taken of Commission investigations over a long period. From these investigations the Commission must select those which best illustrate any behavioural problems identified. Therefore, the preparation of these reports is a long term and complex process.

In addition, public Commission reports of individual investigations provide case studies which identify systems and behavioural problems and provide recommendations for appropriate change. This is illustrated by the following reports issued since Report No. 18:

- *Report on the Investigation into the Complaints of Kelvin Ronald Condren and Others* (November 1992)
- *Report by the Honourable W J Carter QC on his Inquiry into the Selection of the Jury for the trial of Sir Johannes Bjelke-Petersen* (August 1993)
- *A Report of an Investigation into the Arrest and Death of Daniel Alfred Yock* (March 1994).

It is anticipated that the forthcoming reports of the Commission's public inquiries into the Improper Disposal of Liquid Waste in South-East Queensland and allegations in respect of the Basil Stafford Centre will provide similar case studies.

It has also been the practice of the Commission to provide such case studies in its Annual Report. Other case studies are to be found as part of the strategies referred to in the recommended in the *Corruption Prevention Manual* (1993).

The Commission will continue to use case studies/reports to Parliament where possible and appropriate.

Recommendation 2

> ***The Committee recommends to the CJC that it ensures that the turn around time for complaints in the Complaints Section be kept to the shortest possible time. It further recommends that the next Parliamentary Committee conduct a detailed annual assessment of the Section in conjunction with the CJC, to ensure that the Complaints Section is operating effectively and efficiently. An appropriate Annual Report should be prepared on the Committee's findings.***

The text accompanying this recommendation was that the Commission 'ensures that the Complaints Section maintain, as much as is *humanly possible*, the shortest possible time for the turnover of complaints'. The Committee was 'also mindful of the need for the CJC to continue to investigate less serious complaints, even if in a selective way, so that the various responsibilities and activities of police and public officials are monitored' [emphasis added] (Report No. 18, pp. 9-10).

The implementation of this recommendation is addressed in Chapter 2 of this report in relation to Myths and Misconceptions relating to the operation of the OMD (with particular reference to 'Delays in Investigations').

Recommendation 3

> ***The Committee recommends that every possible step be taken by both the relevant Minister and the CJC to facilitate the establishment of a National Witness Protection Scheme. Such a scheme would involve the full co-operation of both the Queensland Police Service and the Criminal Justice Commission.***

This is consistent with the statutory function of the Witness Protection Division to advise the Minister with administrative responsibility for the Commission, the Honourable the Minister for Justice and Attorney-General in relation to arrangements with authorities of the Commonwealth and the other States and Territories, with a view to the establishment of a National Witness Protection Program (s. 62(2)(f) of the Act).

As indicated by its 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992) and in the discussion of the Future Directions of the Witness Protection Division in Chapter 4 of the present submission, the Commission has always taken this obligation seriously and has actively supported the establishment of a National Witness Protection Scheme.

Representatives of the Commission and a representative of the Office of the Cabinet, attended a meeting of the National Steering Committee on witness protection in Canberra on 21 February 1992. At this meeting consideration was given to a draft Witness Protection Bill which proposed that:

- the AFP should assume an expanded National Witness Protection role; and
- these arrangements should be underpinned by complementary Federal and State/Territory legislation.

At the meeting an invitation was extended to interested parties to make a written submission to enable the Witness Protection Bill to be settled and presented to the Federal Parliament.

As a result, a Queensland Government submission was prepared in consultation with the Commission, the Office of the Cabinet, the Queensland Corrective Services Commission, the Department of Justice, the Department of the Attorney-General and the Director of Prosecutions.

It seems that there was no further comment or response sought from the Queensland Government prior to the introduction of the Witness Protection Bill 1994 into the Federal Parliament. This Bill contained slight modifications to the draft considered in 1992. The Commission became aware of this Bill after it was introduced into the Senate on 23 March 1994.

On 9 May 1994, the Selection of Bills Committee recommended that the Bill be referred to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report. This recommendation was agreed to by the Senate. The

Commission was invited to make a submission with regard to this Bill. Such a submission was made and it was considered in the Committee's report (June 1994).

The Commission's submission to the Senate Committee was consistent with that provided to the Queensland Government in 1992. In it the Commission expressed support for the concept of the proposed National Witness Protection Program (NWPP), and indicated that it would participate in it when appropriate legislation is in place.

However, having regard to the recommendation of the Fitzgerald Inquiry and Queensland's current legislation for witness protection, the Commission recommended (at p. 319) that the NWPP be independent from any police body, referring to the example of the U.S. Marshal's Service. The arguments advanced by the Commission in support of this position are referred to in the discussion of the 'Future Direction of the Witness Protection Division'. However, this has not been accepted by the Senate Committee. In the course of that Committee's report, it observed that the Bill closely follows the recommendations of the report on witness protection by the Parliamentary Joint Committee on the National Crime Authority of 1988 (the PJC Report). It made reference to the fact that the PJC Report did not favour the establishment of a separate body to administer the NWPP and recommended the AFP expanding its role.

It is expected that the Bill will be debated in late August 1994, and legislation establishing a NWPP operated by the AFP enacted before the end of the year.

As indicated in the discussion of the proposed legislation in Chapter 11, the proposed operation of the NWPP will not enable the divesture of the Commission's witness protection responsibilities, either to the AFP, NWPP or back to the QPS. As there set out, the Commission's understanding is that, notwithstanding the establishment of a NWPP, witness protection will need to continue at State and Territory level in most instances in which the protection of persons arises for consideration. It is considered that only one or two persons a year might be referred to a NWPP by Queensland. In relation to the transfer of the Commission's witness protection responsibilities to the QPS, and the continued need for witness protection in Queensland to be administered by a body independent of the QPS, reference is again made to the discussion of this issue in Chapter 11.

However, to enable the Commission to participate in the NWPP, consideration should now be given to the amendment of the Act to facilitate this.

To date, the Commission has opted to refrain from attempts to seek amendments to its legislation, preferring to await the establishment of a NWPP. Accordingly, the only legislative amendments which have been recommended to date by the Commission to the witness protection provisions of the Act are of a technical nature

with a view to fine-tuning the operation of the existing provisions. Those legislative proposals have *not* been implemented.

Once the Bill is passed consideration will have to be given to the complementary State legislation required by it. Any such legislation must be enacted within twelve months of the Federal legislation coming into operation. The Commission will consider what should be contained in the complementary State legislation and report to the Committee and the Attorney-General accordingly.

Recommendation 4

> ***The Committee recommends to the CJC that it include in its Annual Report a general report on the extent and use of security information so that the public can be kept fully informed.***

Although the meaning of this recommendation is not entirely clear, it refers to page 14 of the report which states:

> The Parliamentary Committee has dealt with this issue in its December report and on a regular basis in its private "in camera" meetings with the Commission.
>
> This is a matter that has been included in this Report in a general way, even if only briefly, to ensure that it is maintained on the agenda for a future report by the Parliamentary Committee.

This leads to Report No. 13. Whilst there were no specific recommendations in respect of security information in that report, the Committee did indicate, at page 75, that they were most interested in the Commission's oversight role of the BCIQ and in particular the Counter-Terrorist Section that replaced the former Special Branch. The Committee expanded on this aspect at pages 84-86 of the Report. As a result of the concerns there expressed by the Committee, the Commission specifically addressed them in relation to the Counter-Terrorist Section in its 'Submission on the Three Year Review of the Criminal Justice Commission's Activities' (August 1992). Particular reference is made to pages 101-105. It is apparent that as a result of that submission the Committee made Recommendation 4 in Report No. 18.

It was not possible to implement this recommendation through the vehicle of the Commission's Annual Report as it was not considered by the Commission to be the appropriate medium. As a result the 1992/93 Annual report contained only the usual acknowledgment that the function of auditing the CTS intelligence and file procedures had continued with two audits conducted in the reporting period (see p. 45).

As a more appropriate way of meeting the requirements of Recommendation 4 the Commission's Director of Intelligence made a public report on this issue to the Committee during a public meeting between the Committee and the CJC in July 1993. The text of that report is reproduced in Appendix J.

The Commission submits that the most appropriate way for this function to be monitored is through the medium of the Committee rather than including specific mention in the Commission's Annual reports.

Recommendation 5

> ***The Committee recommends that the next Parliamentary Criminal Justice Committee prepare a report to Parliament at the end of 1993 (or included in another report) on the implementation by the CJC of the Committee's recommendations in Report No. 13 and this report.***

In relation to this the Committee said in Report No. 18:

> Future Parliamentary Committees can assess the implementation of the Committee's December 1991 recommendations and the recommendations in this report. *These should be balanced with the attached submission from the CJC.* [emphasis added] (see p. 15)

The implementation of these recommendations is the subject of this chapter.

Recommendation 6

> ***The Committee recommends that the next Parliamentary Committee prepare a detailed report for the Parliament at the end of 1994 or the beginning of 1995 on the future direction of the Commission and the future of its various Divisions. Such an evaluation would include the desirability of a sunset clause.***

This recommendation is to be considered with Recommendation 18 in PCJC Report No. 13:

> The Committee recommends that the integrity of the Criminal Justice Commission requires that it be maintained in its current form until such time as it is shown that its divisions acting independently can fulfil their overall responsibilities more effectively and efficiently than they do as one organisation, and until such time as the

work of any of the divisions is appropriately transferred to other agencies or is no longer required.

The Commission has addressed its future direction and that of its various Divisions throughout this report. It simply submits that on the basis of this analysis, with the exception of the Misconduct Tribunals, it remains the case, that it is essential that the Commission be maintained in its current form for the foreseeable future.

It further submits that having regard to the Commission's and the Committee's powers under the Act, a sunset clause is neither necessary nor desirable.

By virtue of s. 19(2) of the Act, the Commission may from time to time:

- establish and maintain as part of the Commission any other organisational unit or units, if the Commission considers the maintenance by the Commission of such unit or units to be necessary or desirable; or

- terminate any organisational unit maintained as part of the Commission, whether the unit is one prescribed by subsection (1) or is one established by the Commission under this subsection, if the Commission considers the maintenance by the Commission of such unit to be unnecessary or undesirable.

It is by virtue of this provision that the Commission established the Division of Office of General Counsel and the Corruption Prevention Division in December 1992 and March 1993 respectively. Equally, the Commission can terminate any organisational unit, if it considers its maintenance unnecessary or undesirable.

In determining whether the maintenance of an organisational unit is necessary or desirable, the Commission must necessarily have regard to the following provisions of the Act:

- s. 21(1)(b), which provides that the Commission shall:

  discharge such functions in the administration of criminal justice as, in the Commission's opinion, are *not appropriate to be discharged, or cannot be effectively discharged, by the Police Service or other agencies of the State.* [emphasis added]

- s. 23(f), which provides that the responsibilities of the Commission include:

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

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

(ii) matters of witness protection;

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

(iv) investigation of organised or major crime; [emphasis added]

Significantly, during each three year term of the Legislative Assembly, the Committee must conduct a review such as this, and report to the Assembly and the Minister administratively responsible for the Commission as to 'further action that should be taken in relation to this Act or the functions, powers and operations of the Commission' [s. 118(1)(f)]. This is in addition to the Committee's power to monitor and review on a continuing basis the discharge of the functions of the Commission as a whole and of the Official Misconduct Division in particular [s. 118(1)(a)] and to report to the Assembly, with such comments as it thinks fit, on, inter alia, any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the Commission's powers, to which the attention of the Assembly should be directed, in its opinion [s. 118(1)(b)].

In the Commission's view these powers of the Committee to monitor, review and report to the Assembly on any matters pertinent to the Commission, so as to make the Commission accountable to Parliament, when considered with the functions and responsibilities of the Commission to which reference has been made, make it unnecessary and undesirable to include a sunset clause in the Act. Ultimately the position is that, without such a clause, the continued existence or form of existence of the Commission is to be the subject of a report of the Committee to the Parliament at least once every three years. It is submitted that in these circumstances, no further legislative limitations on the life of the Commission are required.

Recommendation 7

The Committee recommends that the CJC prepare a detailed report to Parliament, no later than April 1993, containing a full assessment of the ongoing success of the reforms of the Queensland Police Service to date and that this be carried out on an annual basis until the Parliamentary Committee and Commission determine it is no longer appropriate.

This recommendation must be considered with Recommendation 21 of Report No. 13, which was:

> The Committee recommends that the Criminal Justice Committee conduct a review of the implementation of the recommendations of the Report of the Commission of Inquiry, so far as they relate to the Police Service, and a review of all other reforms in the Police Service, and that the review be tabled in Parliament as a report of the Criminal Justice Commission. The Committee also recommends that a similar review of the Police Service, considering all matters relevant to the structure, staffing, education, powers, procedures and attitudes of the QPS be conducted by the CJC every three years thereafter for the benefit of Parliament and the people of Queensland.

These recommendations reflect the Commission's responsibilities under the Act:

- of overseeing the reform of the Police Service [s. 23(i)];
- for reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the Report of the Commission of Inquiry relating to the administration of criminal justice and to the QPS [s. 23(k)].

In September 1993, the Commission furnished the Parliamentary Committee with a comprehensive report under s. 23(k) of the Act concerning the implementation of the Fitzgerald recommendations relating to the Commission. This was a statement of account, and not an evaluation. The approach was taken because it accepted the Fitzgerald principle that organisations are not well placed to evaluate their own operations.

The Commission is currently in the process of completing the more complex task of evaluating the implementation of the Fitzgerald recommendations directed to the QPS. This requires the Commission to take a more exhaustive analytical approach of the recommendations. Further, whereas the Commission identified 37 recommendations directed to the then proposed Criminal Justice Commission, there were over 125 discrete recommendations directed specifically at the QPS. Therefore the review of these recommendations has necessarily been a longer process.

Having regard to these factors and other priorities that the Commission has been required to address since August 1992, it has not been possible for it to complete the report within the time-frame provided by Recommendation 7. However, deferring the Report has enabled a more accurate reflection of the status of reform in the QPS to be made. There are two key reasons for this:

- The QPS had to implement a substantial number of Inquiry recommendations in the three-year transition period to December 1992. Moreover, there was

a change in the leadership of the QPS in late 1992, after a period of uncertainty. These changes have now had a "settling in period".

- The Public Sector Management Commission (PSMC) conducted a review of the QPS, resulting in the release of a report in April 1993. The report, *Review of the Queensland Police Service*, by the PSMC contained 160 discrete recommendations, many of which recommendations have now been, or are in the process of being, adopted by the QPS. By delaying the release of this Report, it has been possible to take account of these changes and to consider how they relate to the Fitzgerald Inquiry reforms.

However, it is observed that, in December 1993, the Commission released a report on its review of recruitment and training in the QPS. This review, with the soon to be released report evaluating the implementation of the Fitzgerald recommendations directed to the QPS, will cover all major aspects dealt with by the Fitzgerald Inquiry, except disciplinary and complaints procedures. These procedures will be examined in a separate report which will be released subsequently. For the present, information on the operation of these procedures is provided in the Commission's annual reports and the Report on the Implementation of the Fitzgerald Inquiry Recommendations relating to the Commission.

Since August 1992, the Commission has also published other papers in relation to the operation of the QPS. These are:

- Beat Area Patrol – A Proposal for a Community Policing Project in Toowoomba (September 1992)

- Pre-evaluation Assessment of Police Recruit Certificate Course (October 1992)

- First Year Constable Study Summary Report # 2 (January 1993).

CHAPTER 11 – AMENDMENT OF *CRIMINAL JUSTICE ACT 1989*

HISTORY OF RECOMMENDATIONS FOR AMENDMENT

As the Committee is aware, the work of the Commission has been seriously hampered by some aspects of the Act, and the Commission has been requesting that it be amended since 1990. The Commission's efforts to obtain sensible, logical and largely non-controversial amendments to the Act commenced in September of that year when the Commission wrote to its then Minister, the Honourable the Premier and Minister for Economic and Trade Development, who expressed a preference that the proposals for amendment be referred to the Parliamentary Committee. This was done as part of the inaugural Committee's review of the operations of itself and the Commission in 1991. Reference is made to Part A of the Committee's Report No. 9, Vol. 2(b) (16 July 1991) and Appendix G to Part B of Report No. 13 (3 December 1991). Appendix G contained a draft revised Act which incorporated all of the Commission's proposed amendments. As indicated in Chapter 10 the Committee made a number of recommendations requiring amendment of the Act in Part B of Report No. 13. One of these recommendations (no. 6) related to the operation of the Committee. There were a further 20 recommendations (nos. 7-15, 19, 20, 23, 26, 29, 32, 34, 40-43) requiring specific amendment to the Act. However, these recommendations did not specifically address the balance of the Commission's proposed amendments. As to these, the Committee wrote at page 191:

> The Committee is otherwise in general agreement with the draft proposals and endorses all those it has not specifically referred to.

On 28 July 1992, the Committee published Report No. 17 on 'The Committee's Recommendations on Changes to the Method Of Appointment and Conditions of Service of Members of the Misconduct Tribunals'. At pages 019-020 of this report, the Committee proposed a model for replacement of the existing Misconduct Tribunals. The Commission's submission to the Committee on this matter, 'Misconduct Tribunal – Future Structure and Operation' (July 1992) is appended at pages 022-047 of Report No. 17. The Commission understood that its submission was endorsed by the Committee except where otherwise indicated.

In its 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992) the Commission noted that, to that time, relatively few of the recommended amendments had been proclaimed. The Act had been amended twice in 1992. One amendment removed the need for the Commission to investigate

every complaint put to it. The other related to the grounds of appeal from the Misconduct Tribunals.

At the time of that submission, the balance of the recommended amendments was still under consideration by the Office of the Cabinet. The Commission said that it understood that the Office supported making the technical amendments to the Act with a view to their introduction into the Parliamentary session, which was to commence on 25 August 1992. However, a State election was announced before this could occur and the inaugural Committee resolved on 25 August 1992 that Report No. 18 be printed.

In the August 1992 submission that preceded that report, the Commission said that it:

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

At pages 16-17 of Report No. 18, the Committee endorsed the Commission's position as follows:

> Experience has made it clear that the Criminal Justice Act 1989 was inadequately drafted. The recommended amendments by the Committee and the CJC in its report of December 1991 should be dealt with as soon as possible to overcome difficulties arising from the original drafting.
>
> . . .
>
> In conclusion, it should be pointed out that delay in implementing recommended changes to the Act will only cause future problems and the Parliamentary Committee recommends that urgent legislative attention be given to these recommendations as soon as possible in the 47th Parliament.

The difficulties arising from the original drafting of the Act have been recognised by the Court of Appeal in *Whiting v. Criminal Justice Commission* (Q.L.R. 4/9/93). The Chief Justice characterised the drafting of the Act as 'inconsistent and incomplete'. He also observed that there 'is a certain difficulty in reading ss. 3.23(1), 3.23(2), 3.30(1)(c) and 3.34(f)(iii) together to derive a consistent indication in every matter with which they dealt'. As an example, His Honour referred to one interpretation of subsection 3.34(f)(iii) as indicating 'a gap in the Act'. Moynihan J put this even more

pointedly when he characterised the task of reading the Act and particularly those provisions 'in an integrated way as fraught with difficulty, if not impossibility'. Pincus JA considered that the provisions of the Act dealing with the question of legal representation 'do not mesh together perfectly well'.

The Act has been amended twice since the publication of Report No. 18:

- *Criminal Justice Amendment Act 1993* (commenced on 10 December 1993)
- *Justice and Attorney-General (Miscellaneous Provisions) Act 1994* (commenced on 30 May 1994.

In his second reading speech reported in 327 Queensland Parliamentary Debates at page 982, the Honourable the Minister for Justice and Attorney-General said that the principle objectives of the *Criminal Justice Amendment Act 1993*, were:

- to provide for a number of technical amendments to the *Criminal Justice Act 1989* which had been recommended by the Parliamentary Criminal Justice Committee and the Criminal Justice Commission which will clarify the Act and facilitate its administration
- to extend the confidentiality provision of s. 6.7 (now s. 132) of the Act to former Commissioners and officers of the Commission and former members of the Parliamentary Committee
- to authorise the legally qualified commissioner to preside at hearings in his or her own right
- to authorise former judges and other eminent members of the legal profession to preside at hearings without having to make them officers of the Commission
- to make it an offence for a person to make a false allegation, causing a Commission investigation.

The Attorney-General observed at the same page:

> The amendments in this Bill represent the *first stage* of a *phased review* of the Criminal Justice Act in light of the reports and recommendations of the Parliamentary Criminal Justice Committee, submissions by the CJC, and other relevant matters. The amendments in this Bill adopt those recommendations of the Parliamentary Criminal Justice Committee which are considered to be *technical amendments*. They are *non-controversial*. They will better facilitate the operation of the Act *pending full*

> *consideration* of the *substantive recommendations* of the Parliamentary Criminal Justice Committee and any other issues which are identified as requiring examination.
> [emphasis added]

The most recent amendment was necessary to clarify the Commission's position as a 'statutory body' for the purpose of the *Financial Administration and Audit Act 1977*. The opportunity was also taken to make some further minor technical amendments to the Act.

Notwithstanding this legislation, the position is that the one amendment proposed by the Committee in Report No. 13 in relation to its operation (Recommendation 6) has not been implemented. Of the remaining twenty recommendations in that report, eight have been implemented, two have been implemented in part and 11 have not been implemented.

Of the eight recommendations which have been implemented, one relates to the use of gender neutral language and another to the use of plain English in the Act. Still another relates to the wording of a heading of a Part of the Act.

A further recommendation that the Commission has regarded as implemented for this purpose is that in relation to the Misconduct Tribunals. As indicated in Chapter 10 Cabinet has decided that the Tribunals will be transferred to the District Court.

The partially implemented recommendations are 13 and 26 of Report No. 13. Recommendation 13 related to s. 2.24 (now s. 33) of the Act. The aspect of the recommendation that has not been implemented has been analysed by the Commission at page 39 of the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992) and in Chapter 10 of the present submission. As indicated on those occasions, the Commission is concerned that there may be some unforeseen and difficult circumstances if the recommendation by the Committee is adopted.

Recommendation 26 is related to s. 6.7 (now s. 132), which is the confidentiality provision of the Act. This again has been discussed in detail at pp. 39-41 of the Commission's August 1992 Submission and in Chapter 10 of the present submission. As observed in the last mentioned chapter, the Committee Chairman noted, in his speech on the second reading of the Amendment Bill, that the new section is defective in not extending the obligation of confidentiality to staff used by the Committee. The Commission also considers that the amended section does not constitute the more comprehensive mechanism to deal with confidentiality of information and to serve as the proactive dissemination mechanism that the Commission and the Committee had contemplated. It considers that the reassessment of this section with a view to it

achieving the purpose for which the amendment was originally proposed should proceed as a priority.

Recommendations 7, 8, 10, 12, 14, 15, 19, 20, 34, 40 and 42 have not been implemented. Recommendation 42 is subject to the implementation of a recommendation of the Criminal Code Review Committee. As the Review Committee's recommendation has not been implemented to date, Recommendation 42 must remain in abeyance.

The Commission would prefer that Recommendations 15 and 40 not be implemented. Recommendation 15 was that s. 2.46(1) [now s. 57(1)] of the Act be amended to require Queensland Government Departments to inform the Research and Co-ordination Division of their activities and liaise and co-ordinate their activities with the Division. As indicated in the discussion of that recommendation in Chapter 10 of this submission, the Commission does not consider such an amendment to be necessary because it is not appropriate or practical for the Commission to co-ordinate criminal justice reforms. In the Commission's view, its statutory obligation should be to co-ordinate *with* other agencies to ensure that there is no duplication of effort.

Recommendation 40 was that the Act be amended to include the Queensland Corrective Services Commission in the definition of 'unit of public administration'. In making this recommendation, the Committee was endorsing a recommendation of the Commission. However, as stated by the Commission at pages 41-42 of its August 1992 submission, it now considers that the preferable mechanism for defining a 'unit of public administration' is to enable entities to be excluded and included by Regulation. The primary concerns that the Commission has in relation to the specific inclusion of the Queensland Corrective Services Commission as a unit of public administration are set out in the discussion of the recommendation in Chapter 10.

This leaves eight specific recommendations by the previous Committee which have not been implemented. In addition, many other proposed amendments to the Act which were endorsed by the previous Committee without specific reference, have not been implemented.

In addition the present Committee made a number of recommendations for amendment of the Act in its 'Report of a Review of the CJC's use of its power under s. 3.1 of the CJ Act 1989' (Report 20 Part B, 23 September 1993). It is convenient to catalogue the Committee's recommendations in that report. These were as follows:

Recommendation 1

The Committee endorses the recommendation of the Criminal Justice Commission made in September 1991, (and endorsed by the previous Committee in Report No. 13, Part B), that s. 3.1(1) of the Criminal Justice Act 1989 be amended by deleting the word "custody" and inserting in lieu thereof the words "possession, custody or control".

Recommendation 2

The Committee endorses the recommendations made by the Criminal Justice Commission in September 1991 (endorsed by the previous Committee in Report No. 13, Part B), that s. 3.1 of the Criminal Justice Act 1989 be amended to expressly authorise the Chairman of the CJC to require the person on whom any notice is directed to attend before an officer of the Commission to produce the record or thing.

Recommendation 3

The Committee endorses the previous Committee's recommendation (Recommendation 20, Report No. 13, Part B: 81-82) that s. 3.3 of the Criminal Justice Act be amended by removing those provisions which apply to an offence, thus making the power to apply for search warrants in cases of suspected official misconduct as well as to suspected breaches of the Law.

Recommendation 4

The Committee endorses the repeal and replacement of s. 3.6 as proposed by the CJC in its submission of September 1991 (see Report No. 13, Part B, Appendix G:111-112) and endorsed by the previous Committee:

> *"s. 3.6 Summons to procure evidence. (1) The Chairperson, or his or her delegate, by notice signed by him or her may summon a person to attend before the Commission on a day and at a time and place specified therein and to then and there -*
>
> *(a) give evidence -*

(i) where the attendance is before a Misconduct Tribunal to then and there give evidence in relation to the disciplinary charge of official misconduct before the tribunal in accordance with s. 2.30;

or

(ii) where the attendance is before the Commission other than a Misconduct Tribunal, to then and there give evidence in relation to the subject-matter of the Commission's investigation;

or

(b) produce to the Commission a record or thing in the person's possession, custody or control specified in the notice in relation to a matter or group of matters referred to the Misconduct Tribunals in accordance with s. 2.30 or the subject matter of the Commission's investigation as the case may be;

or both.

(2) The authority conferred by subsection (1) does not extend to authorize the issue of a notice that would compel a prescribed person referred to in s. 2.36 subject to an inquiry to a matter or group of matters referred to the Misconduct Tribunals in accordance with s. 2.30 to give or adduce evidence relevant to that inquiry".

Recommendation 5

The Committee accepts the submission of the CJC in September 1991 (Report No. 12, Part B, Appendix G:116) and recommends that s. 3.7 be repealed.

Recommendation 6

That s. 3.8(3) be amended to apply to notices under s. 3.1 of the Act in addition to notices of summons under s. 3.6 that it is not a lawful excuse

to not comply with a s. 3.1 notice because of a duty or obligation of confidentiality.

A similar amendment was previously suggested by the Commission (Report No. 13, Appendix G:121) and accepted by the former Committee (Report No. 12, Appendix G:191).

Recommendation 7

That s. 3.24 be amended to extend the protection of the section to prevent the use of incriminating records and things against the person in civil or criminal proceedings in a court or in disciplinary proceedings.

Recommendation 8

To amend s. 3.24 to provide an exemption to the abrogation of privilege against self incrimination where the person affected is awaiting the outcome of a charge for an offence in relation to which the information, evidence or records or thing sought by the CJC may tend to be incriminating.

Recommendation 9

Currently s. 3.22(4), which provides that a person is not able to be compelled to disclose a secret process of manufacture, does not apply to s. 3.1 notices. The Committee therefore recommends that the protection in s. 3.22(4) be extended to apply to s. 3.1 notices.

With one exception, none of these further recommendations have been implemented to date. The exception is Recommendation 7 which was translated into effect on 10 December 1993. It is noted that s. 3.24 is now s. 96 of the Act.

With transfer of administrative responsibility for the Commission from the Premier to the Attorney-General, the Government established an Inter-Departmental Working Group to consider the recommendations in Report Nos. 13, 17 and 18, and to review the Act generally. The Working Group consists of officers of the Office of the Cabinet, the Department of Justice and Attorney-General, the Queensland Police Service and the Public Sector Management Commission.

The Commission has been somewhat puzzled about the composition of this Working Group and the nature of its deliberations. After all, it is the Committee that is charged with the responsibility under s. 118(1)(f)(ii) of the Act, of reporting 'to the Legislative Assembly and to the Minister as to further action that should be taken in relation to the Act or the functions, powers and operations of the Commission'. That has now been done on four occasions. After that it would appear to be for the Attorney-General, as the relevant Minister under the Act, then for Cabinet, and ultimately for the Legislative Assembly to decide what happens to the Committee's recommendations. Furthermore, while the Commission appreciates that the Office of the Cabinet may seek advice from any source it chooses, it does not understand why it is that officers of the QPS and the PSMC are members of the Group. Under the Act, the Commission oversees the reform the QPS and investigates alleged or suspected misconduct and official misconduct by members of the Service. It is, to say the least, incongruous to have members of the QPS being members of a body whose functions include considering the overall structure of the Commission. Moreover, the Commission is not subject to the jurisdiction of the PSMC. It is also regrettable that the Commission, as the body under scrutiny, has not been invited to nominate an officer as a member of the Working Group. The Working Group has played a role in the recent amendment of the Act and is continuing to explore the matters within its charter.

In the Commission's 1992/1993 Annual Report, it makes specific reference to a number of the amendments that it had sought. With one exception, these amendments were addressed in the *Criminal Justice Amendment Act 1993*. The exception was the clarification of the definition of 'unit of public administration'.

The Commission is concerned that the outstanding legislative amendments recommended in Reports Nos. 13, 18 and 20 Part B be implemented as a matter of urgency. Without purporting to be exhaustive, it makes particular reference to the following proposals which it considers to be a matter of priority:

- Further amend s. 132 to extend its application to present and former Committee staff and to operate as a comprehensive mechanism to deal with confidentiality of information and to serve as a proactive dissemination mechanism (Report No. 13, recommendation 26).

- A new section be included to prevent a person disclosing both the fact that he/she had complained to the Commission against another citizen and the details of that complaint. Such a disclosure would be an offence (Report No. 13, page 191).

- Clarifying the definition of 'unit of public administration' (Report No. 13, page 191).

- To recognise that in certain respects the Commission is a law enforcement agency (Report No. 13, recommendation 8).

- Include a definition of 'a report of the Commission' for the purpose of s. 26 (Report No. 13, recommendation 10).

- Amend s. 27 so that confidential information not disclosed in a Commission report, may be disclosed to the Committee and the Minister without being deemed to be part of the report. Further, to make it an offence to disclose information gained in these circumstances, except if disclosure is in discharge of a function under the Act (Report No. 13, recommendation 34).

- Amend s. 69 (Notice to discover information) as previously proposed by the Commission (Report No. 13, recommendation 19; Report No. 20 Part B, recommendations 1 and 2).

- Amend s. 71 to enable the Commission to apply for search warrants in cases of suspected official misconduct (Report No. 13, recommendation 20; Report No. 20 Part B, recommendation 3).

- Amend s. 74 (Summons to procure evidence) as recommended by the Commission (Report No. 20 Part B, recommendation 4).

- Repeal s. 75 (Report No. 20 Part B, recommendation 5).

- That, as recommended by the Commission, s. 76(3) be amended to apply to Notices under s. 69 in addition to Notices of Summons under s. 74 (Report No. 20 Part B, recommendation 6).

- Amend s. 83 in relation to the use of information disclosed by listening devices (Report No. 13, p. 191).

- Amend s. 95 (Examination before Commission) in order to clarify its meaning and rid it of ambiguity (Report No. 13, pp. 140-142; and August 1992 submission, pp. 47-48).

- Amend s. 96 in order to clarify its meaning (Report No. 13, p. 191).

- Amend s. 120 to ensure that any judicial review of a Commission investigation under s. 34 is not used 'as a window' on the activities of the Official Misconduct Division (Report No. 13, p. 191).

- To give legal recognition to the 'official solicitor' to the Commission and the appearance of legal practitioners who are in full-time employment of the Commission to represent or act as counsel or junior counsel for the Commission (Report No. 13, p. 191).

The reference to Report No. 13, page 191 is to the general endorsement by the Committee of all Commission proposals for amendment that had not been specifically referred to.

The recommended amendment to make it an offence for a person to disclose the fact that the person had complained to the Commission against another citizen or the details of that complaint, was proposed by the Commission at page 199 of the draft Act in Appendix G to Part B of Report No. 13. The purpose of the amendment was discussed in the Commission's 'Submission on the Three-Year Review of the Criminal Justice Commission's Activities' (August 1992) at pages 49-51. As there indicated, the amendment was intended to protect the privacy of any person against whom a complaint is made. It was sought for reasons of fairness to all such persons. It would also ensure that Commission investigations are not prejudiced by premature public disclosure. The amendment would not prevent debate in Parliament or the community on matters under investigation by the Commission, or the conduct of Commission investigations.

The Commission reiterates that it was forced to seek this amendment in light of its experience to that time. In light of recent experience, the Commission remains of the view that a legislative mechanism is the only way to prevent persons publicly disclosing that they have made a complaint to the Commission against another citizen. The Commission remains happy to accept advice from Parliamentary Counsel on the precise legislative mechanism to achieve this.

The necessity for the amendment to define 'a report of the Commission' was emphasised by the argument for the defendants in *Criminal Justice Commission v. News Limited and King* (No. 27 of 1994) which has been discussed in relation to Recommendation 10 of Report No. 13 in Chapter 10.

In support of the proposed amendment to s. 95, reference is made to the critical comments of the Court of Appeal in *Whiting v. Criminal Justice Commission* (Q.L.R. 4/9/93) as to the drafting of this and related sections. These comments have been set out above.

FURTHER PROPOSED AMENDMENTS

RESEARCH AND CO-ORDINATION DIVISION

Reference was made in relation to Recommendation 15 of Report No. 13 in Chapter 10 to the fact that the Commission considers that the role of the Research and Co-ordination Division would be enhanced if the Act were amended to:

- more precisely focus its functions
- remove the obligation to discharge many of its functions on a continuing basis
- vest it with a discretion to determine its priorities.

In relation to its 'co-ordination' role, as has been stated in relation to that recommendation and Recommendation 7 of Report No. 13 in Chapter 10, the Commission considers that the Division's statutory obligation should be co-ordination *with* other agencies to ensure that there is no duplication of effort. As stated, this co-ordination role is sufficiently discharged through the Inter-Agency Forum on Law Reform which was established by the Office of the Cabinet following the Commission's suggestion.

As also stated in relation to Recommendation 7, the Commission would prefer that s. 21(1)(a) of the Act be recast so that its function would be 'to review, and propose initiatives in relation to the reform of, the administration of criminal justice'. Without repeating the discussion in that chapter, the Commission again observes that it would favour an associated amendment to clearly give it a discretion to determine its priorities in the discharge of any such function. This will ensure that it cannot be the subject of litigation with a view to a court ordering it to discharge a continuing responsibility, notwithstanding its other commitments and priorities. It has advised the Working Group it holds this view in relation not only to s. 21(1)(a), but also in respect of the discharge of its responsibilities under s. 23, paragraph (c) of which was the subject of the litigation in the *Boe v Criminal Justice Commission* (Appeal No. 319 of 1993), and s. 56(3)(f) of the Act. This last mentioned section makes it a function of the Division:

> to review on a *continuing* basis the effectiveness of programs and methods of the Police Department, in particular in relation to -
>
> (i) compliance by the department with the Commission's recommendations or policy instructions;

(ii) community policing;

(iii) prevention of crime;

(iv) matters affecting the selection, recruitment, training and career progression of members of the Police Service and their supporting staff;

[emphasis added]

Reference is also made to s. 56(3)(g) by virtue of which it is a function of the Division to:

. . .

(g) to review the use and treatment by the Police Service of intelligence information concerning criminal activity, in particular when required by the Intelligence Division to do so;

The first part of this provision is discharged by the Intelligence Division under s. 58(2)(d) of the Act by virtue of which it oversees the performance of the role of the Bureau of Criminal Intelligence of the QPS. The Intelligence Division has the experience and expertise to discharge this function. Accordingly, the Research and Co-ordination Division has never had to require the Intelligence Division to review the use and treatment by the Service of intelligence information concerning criminal activity. In these circumstances, this function of the Research and Co-ordination Division merely duplicates a function for which a specialist Division of the Commission has been established, and is adequately equipped to discharge. Therefore, it is recommended that s. 56(3)(g) be repealed.

With regard to these issues, reference is again made to Chapter 5 in relation to the Research and Co-ordination Division.

Further, as observed in that chapter, if there is concern about the Commission duplicating the work of the Law Reform Commission or other criminal justice agencies, this could be addressed by inserting into the Act a requirement that the Division 'consult with' relevant criminal justice agencies before commencing work on a project, in order to minimise the duplication and overlap. If this was done, it would logically follow that a similar provision should also be inserted in the legislation of related agencies. An alternative strategy might be to amend the existing s. 57(1) of the Act to refer to 'agencies in the State concerned with the reform and/or administration of criminal justice in the State', rather than simply government 'departments'.

WITNESS PROTECTION DIVISION

Reference is made to the Commission's response to Recommendation 3 of Report No. 18 in Chapter 10 which is concerned with the effect of the establishment of a National Witness Protection Program. As there indicated, it is likely that the Witness Protection Bill 1994 will become law in the near future. This will establish a National Protection Program. It will then be necessary for consideration to be given to enacting the complementary State legislation required by the Federal legislation. Any such State legislation must be enacted within twelve months of the Federal legislation coming into operation. The Commission will consider what should be contained in the complementary State legislation and report to the Committee and the Attorney-General accordingly. It would then seem necessary to modify s. 62(2)(f), which currently requires the Division:

> to advise the Minister and the Commission in relation to arrangements with authorities of the Commonwealth and the other States and the Territories, with a view to the establishment and operation of a national witness protection program.

With the passage of the Federal legislation, it will no longer be necessary to advise the Minister with a view to the establishment of such a program. Further, it will be necessary to give consideration to the amendment of the Act to facilitate the participation of the Commission through the Witness Protection Division in this Program.

JURISDICTION TO INVESTIGATE ELECTED OFFICIALS

For the reasons advanced in Chapter 2 the Commission considers that the Act should be amended to extend its jurisdiction to investigate conduct of elected members of local authorities which, although constituting an abuse or misuse of the powers of office within s. 32(1)(a)-(c) of the Act, falls short of criminal conduct.

CHAMBER APPLICATIONS

SECTION 119(1)

The Commission proposes that s. 119(1) of the Act be amended so as to expressly override s. 15 of the *Supreme Court Act 1892*.

Section 119(1) applies, inter alia, to applications to the Supreme Court for an injunction and for determination of a claim of privilege. For the purpose of this section, an application for an injunction, includes an application by the Commission under s. 104 of the Act to prevent victimisation of 'a whistleblower'.

These provisions are set out in Chapter 2 in relation to the decision of Demack J on 8 February 1994 in *Criminal Justice Commission v. The Council of the Shire of Whitsunday*, that reading the Act with the Supreme Court Act, the application before him should be adjourned to open Court.

For the reasons advanced in Chapter 2, if His Honour's ruling is correct, the proper functioning of the Commission would be frustrated if a person accused of victimisation could insist on any application for an injunction being heard in public.

In addition, if His Honour's interpretation of the legislation is correct, this would also have the effect that the hearing of other opposed applications, to which s. 119(1) of the Act relates, must be heard in open Court unless the parties otherwise consent, notwithstanding any prejudice to the appellant's investigation and a person concerned in that investigation, e.g. applications for an injunction in respect of an OMD investigation under s. 34 and in the determination of a claim of privilege under s. 77 of the Act. This would frustrate the Commission in obtaining and maintaining on a confidential basis, information for the purpose of its investigations, and would thereby prejudice the integrity of these investigations.

Although the Commission has instituted an appeal to the Court of Appeal against this decision[14] and a constitutional issue arising in the same case, it recommends that the matter be placed beyond all doubt by an appropriate amendment which clearly makes s. 15 of the *Supreme Court Act 1892* subject to s. 119(1) of the Act.

This issue should be considered in the preparation of the Whistleblowers Protection Act.

SECTION 119(2)

The argument in the Whitsunday case also highlighted an unintended consequence of the drafting of the Act in so far as it applies to whistleblowers. This is found in s. 119(2), which provides:

---

[14] The judgement of the court was delivered on 28 July 1994 after the body of the submission had been prepared. The judgement and its effect are analysed in Appendix K.

> An application for revocation of an order referred to in subsection (1)(a) or for an order referred to in subsection (1)(d) shall be heard ex parte.

The effect of this section, in respect of an injunction obtained under s. 119(1) to protect a whistleblower, is to enable the person against whom the injunction operates to apply to the Supreme Court for its revocation without advising the Commission. This is clearly a result which cannot have been intended by the legislature.

This unintended consequence has arisen from the fact that s. 119(2) existed in its present form at the time of the introduction of ss. 104 and 131 into the Act on 2 November 1990 of the *Whistleblowers (Interim Protection) and Miscellaneous Act 1990* to provide protection for persons who are the subject of victimisation or threatened victimisation.

Prior to 2 November 1990, s. 119(2) simply operated to enable the Commission to obtain the ex parte revocation under s. 35(2) of the Act of an injunction under s. 34 against the conduct of an investigation, or an order under s. 71 for the issue of a warrant. It can be readily appreciated why such applications should be heard ex parte. In either case it would prejudice the integrity of the Commission's investigation if the fact of the application were made known. However, the same argument does not apply in respect of an injunction which is obtained to protect a whistleblower from victimisation such as dismissal. It would be grossly unfair to the whistleblower to have such an injunction revoked without the opportunity for the Commission to be heard on the issue. Such a result is likely to discourage prospective whistleblowers from providing information to the Commission. Nothing could be more calculated to defeat the purpose of the introduction of the whistleblower interim protection provisions into the Act.

The difficulty has arisen from the failure to introduce a discrete procedural provision in relation to applications under s. 104 into the Act. Instead, such applications were left to be governed by the general procedural provision which were already operating, e.g. s. 119(1)(a) and (2). The unintended consequence to which reference has been made, would not have occurred if a specific procedure had been introduced as was the case in relation to applications under s. 34 (see s. 120), s. 75 (see s. 121), s. 77 (see s. 122), s. 82 (see s. 123) and 84 (see s. 124) of the Act.

It is therefore recommended that if s. 104 remains in the Act after Whistleblower's Protection legislation is enacted, s. 119(2) be amended so as not to apply to applications under s. 104 of the Act; and that it be made clear that an application to revoke an injunction obtained under that section cannot be made ex parte. It is submitted that this can be best achieved by the incorporation of a specific procedural

provisions to govern all aspects of s. 104 applications. Any such provision could also address the recommended amendment of s. 119(1) of the Act.

This issue should also be considered in the preparation of the Whistleblowers Protection Act.

PROCEEDINGS OF COMMISSION – USE OF ELECTRONIC MEANS TO CONDUCT BUSINESS AT COMMISSION MEETINGS

The Commission recommends an amendment of s. 16 of the Act to include provisions similar to s. 104(1) and (2) of the *Australian Securities Commission Act 1989* (the ASC Act), which enables a meeting to be held by a method of communication or a combination of methods of communication, approved by the Commission. Therefore, when all members necessary to constitute a quorum for the conduct of Commission business are unable to be physically present together, the business can be lawfully transacted by such electronic means as are available for communication, e.g. telephone or video conferencing.

Insofar as is relevant, s. 16 of the Act provides:

> . . .
>
> (3) The chairperson is to preside at all meetings at which the chairperson is *present*.
>
> (4) If the chairperson is *not present* at a meeting, the commissioners present are to appoint 1 of them to preside.
>
> . . .
>
> (7) A quorum of the Commission consists of 3 members except when a report of the Commission is presented to a meeting for adoption, when a quorum consists of 4 members.
>
> [emphasis added]

With regard to this provision and also s. 13(1) and (2), the Commission is concerned that for the purposes of the Act, business may only be conducted at a meeting of the Commission at which the requisite number of members for a quorum are 'physically present' at the same place.

If this interpretation is correct, it is not possible for a report to be presented to a Commission meeting for adoption where only three members are 'physically present' at the Commission's premises in Brisbane and only electronic means are available for

communication with a fourth member. This would be so even when all members are already familiar with the content of the proposed report.

Any purported adoption of a report in these circumstances would be annulled; the document would not be a valid report of the Commission which can be furnished under s. 26 of the Act and therefore s. 26(4) would not apply to grant immunities and privileges of reports tabled in and printed by order of the Legislative Assembly. As a result of this concern, the Commission has postponed consideration of proposed reports under s. 26 when only three of its members have been physically present in Brisbane at the time of a Commission meeting. The validity of the Commission's interpretation is emphasised by comparison with the provisions of the *Australian Securities Commission Act 1989* concerning meetings of that Commission.

Section 107(1) of the ASC Act similarly to s. 16(5) of the Act provides that questions arising at such a meeting shall be determined by a majority vote of the members 'present'.

Section 106(1) of the ASC Act similarly to s. 16(3) of the Act provides that the chairperson shall preside at all meetings at which he or she 'is present'.

Section 106(2) makes provision for who shall preside when the chairperson is 'not present'. Section 16(4) also deals with this situation in the Act.

However, unlike the Act, the ASC Act provides for approved methods of communication where members are not 'physically present' in the same place. Thus, s. 104 provides:

> (1) If all the members who are not absent from the office so agree, a meeting may be held by means of a method of communication, or by means of a combination of methods of communication, approved by the Commission for the purposes of that meeting.
>
> (2) For the purposes of this part, a member who participates in a meeting held as permitted by sub-section (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.

It is therefore proposed that the difficulty identified in s. 16 be overcome by adding to it provisions similar to s. 104(1) and (2) of the ASC Act. This will ensure that the Commission is able to conduct its business through the use of modern technology. It is to be remembered that four of the five Commissioners are appointed on a 'part-time basis' (see s. 8(3) of the Act) and therefore may have other commitments which will take them away from Brisbane for periods of time. It is also important that they

be able to conduct visits to other parts of the State on Commission business. The proposed amendment will ensure that such necessary absences do not inhibit the Commission in the conduct of its business.

FALSE COMPLAINTS

The *Criminal Justice Amendment Act 1993* inserted a new s. 137 which makes it an offence to wilfully make a false complaint or otherwise give false information to the Commission. This amendment reflected the terms in which it was sought by the Commission (see p. 218 of Appendix G to Part B of Report No 13, s. 6.1.1). Now that the Commission has had some experience with the operation of the section it has become apparent that the section does not have the intended effect of making it an offence for a person to make a false allegation causing a Commission investigation. As indicated in Chapter 2, this is because a large proportion of complaints investigated by the Commission are made directly to the QPS in the first instance and referred to the Commission in accordance with obligations under the Act and the *Police Service Administration Act 1990*. It is therefore proposed that s. 137 be further amended to take this fact into account.

RESTRICTED ACCESS TO COMMISSION'S MATERIAL - CLARIFICATION OF SECTION 99

In the course of considering a matter referred by the Commission, the Director of Prosecutions has made some pertinent observations as to the lack of clarity of this section which provides:

> Subject to section 98, any information, record or thing in the possession of the Commission may be utilised and dealt with in discharge of the functions and responsibilities of the Commission or of the functions of any organisational unit of the Commission, but otherwise shall not be made available for inspection by any person without the express authority in writing of the chairperson.

The Director observed that the phrase 'any information, record or thing in the possession of the Commission' presents considerable difficulty because the wording is so wide that without certain other words being implied it is difficult to give the provision sensible meaning. To illustrate, the Director said that unless the word 'confidential' or similar is read as being implied between the words 'any' and 'information', or unless a restricted interpretation is given to the term 'possession of the Commission', the section would apply to the provision of a published report or text book if that item was in the possession of the Commission and it was not

provided in the discharge of a function of the Commission. Indeed if the relevant possession were not understood to mean sole possession it would be impermissible for a person to make available for inspection a photocopy of a letter of complaint sent by that person to the Commission.

As this is a penal provision the section is to be interpreted in a strict or cautionary way: see *Tuck & Son v Priester* (1887) 19 QBD 629 at 645 and *Abrahams v R* (1940) 64 CLR 577 at 581. Although a court is likely to give a highly restricted interpretation to the section it is difficult to predict exactly what form the court's interpretation would take. In these circumstances urgent consideration is required to clarify the meaning of the section. It would be appropriate to do this in conjunction with the proposed reconsideration of s. 132.

CONCLUSION

The Working Group has advised that all previously proposed amendments which have not been implemented remain open for consideration. It is anticipated that a Bill will be introduced into the Legislative Assembly later this year to, inter alia:

- transfer the Misconduct Tribunals to the District Court
- clarify the definition of 'unit of public administration'
- amend s. 23 of the Act.

The Working Group has also indicated that it will meet with the Commission at a future time to consider other issues in relation to the Commission's functions.

However, as outlined in this chapter, the Commission remains concerned that many legislative amendments recommended by the Committee in Reports Nos. 13, 18 and 20 Part B remain to be implemented. As indicated by the Commission in its August 1992 submission to the first three-year review by the Committee and in the 1992/93 Annual Report, it is concerned that these recommendations for legislative amendment be implemented as a matter of urgency. In the alternative, if any recommendation is not to be implemented, this should be made public together with the reasons for not doing so.

APPENDICES

APPENDIX A

SUMMARY OF COMMISSION'S PROGRAM STRUCTURE (AS AT 30 JUNE 1994)

Goal	Program	Sub-Program
To ensure the integrity of public administration	Public Administration Integrity	Investigation of Misconduct/ Official Misconduct Misconduct Tribunals
To promote a fair and effective criminal justice system	Criminal Justice Research and Reform	Criminal Justice Research and Monitoring Police Service Reform
To make an effective contribution to combating organised and major crime	Organised and Major Crime	Intelligence Operations Witness Protection
To promote proactive corruption prevention in the public sector, professional organisations and other agencies	Corruption Prevention	Public Sector Liaison Management Systems Reviews Education and Training Whistleblower Support
To promote public understanding and informed discussion on criminal justice issues	Public Awareness	Public Awareness Public Education and Communications
To assist the Commission in achieving its goals	Organisational Support	Executive Management Resource Management

From the *Criminal Justice Act 1989*

Functions

21.(1) The Commission shall -

(a) continually monitor, review, coordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice;

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

(2) In discharging its functions the Commission shall -

(a) wherever practicable, consult with persons or bodies of persons known to it to have special competence or knowledge in the area of the administration of criminal justice concerned, and seek submissions from the public; and

(b) in its report present a fair view of all submissions and recommendations made to it on the matter in relation to which it is discharging its functions, whether such submissions and recommendations are supportive of, or contrary to, the Commission's recommendations on the matter.

(3) Subject to Section 26, the Commission shall report to the Parliamentary Committee -

(a) on a regular basis, in relation to the Commission's activities;

(b) when instructed by the Parliamentary Committee to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice;

(c) when the Commission thinks it appropriate to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice.

(4) The Commission shall monitor, review, coordinate and initiate implementation of the recommendations relating to the administration of criminal justice contained in the Report of the Commission of Inquiry, and to that end, having regard to that report, shall prepare a program of priorities.

Commission to Act Independently etc.

22. The Commission must at all times act independently, impartially, fairly and in public interest.

Responsibilities

23. The responsibilities of the Commission include -

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

(b) monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally;

(c) monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies including the office of the Director of Prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the *Legal Aid Act 1978*);

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

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

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

(i) research and coordination of the processes of criminal law reform;

(ii) matters of witness protection;

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

(iv) investigation of organised or major crime;

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

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

(i) overseeing reform of the Police Service;

(j) reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (in particular, organised crime) and the efficiency of law enforcement by the Police Service;

(k) reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the Report of the Commission of Inquiry relating to the administration of criminal justice, and to the Police Service;

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

APPENDIX B

ROLE OF PART-TIME COMMISSIONERS

During the period to which this submission relates, Dr J Irwin and Professor J Western and Mr J Kelly, Mr L Wyvill QC, Mr B Ffrench, Professor R Homel and Mr B Bleakley were part-time Commissioners.

The part-time Commissioners bring a broad range of professional and practical experience to the Commission. In accordance with s. 24(1) of the Act, each of the persons who have held this position since the previous Three-Year Review has played an active role in advising and assisting the Chairperson and Commission staff in relation to the proper discharge of the Commission's functions and responsibilities. Each has been closely involved in the Commission's daily activities. They have responsibility for Divisions most closely related to their own expertise and participate in policy formulation and decision making.

During 1993/1994, the Commission met formally to transact Commission business on 29 occasions comprising 23 ordinary meetings and six special meetings. At these meetings, Directors and other senior staff report and are questioned on the activities of their areas of responsibility. From time to time special meetings are held to deal with specific issues, such as the adoption of Commission reports for tabling under s. 26 of the Act.

COMMISSIONERS FOR POLICE SERVICE REVIEW

As indicated, an important function undertaken by part-time Commissioners has been fulfilling the office of Commissioner for Police Service Reviews (Review Commissioner). That office was established pursuant to Part I – Review of Decisions of the *Police Service Administration Act 1990* (PSA Act) and the *Police Service (Review of Decisions) Regulation 1990* (the Review Regulation). A Review Commissioner is any member of the Commission nominated by the Chairperson of the Commission to be a Review Commissioner. More than one person may hold office as a Review Commissioner.

It is the role and function of a Review Commissioner under s. 9.3(1) of the PSA Act to review decisions, referred by a police officer who is aggrieved, about:

- the selection of an officer for appointment to a position, whether on promotion or transfer, where the selection is on the basis of merit of applicants, or

- the selection of an officer for transfer otherwise than on the basis of merit, or

- action for breach of discipline, or

- suspension or standing down.

The purpose of the reviews is to:

- provide officers with access to an independent review of such decisions

- ensure that the decisions made in relation to such officers are fair, just and compassionate, and are made in accordance with sound management practices with due regard to the efficiency, effectiveness and professionalism of the Police Service.

Pursuant to regulation 15 of the Review Regulation, the remuneration and allowances of the Review Commissioners is paid out of the moneys appropriated by Parliament to the purposes of the Commission.

Those members of the Commission who have been nominated by the Chairperson as Review Commissioners bring to these positions a unique insight into the Police Service by virtue of their positions as CJC Commissioners. The Review Commissioners are able to observe inadequacies and inconsistencies of procedures and decision making processes at first instance, and to suggest appropriate reforms thereto.

Conversely, the CJC Commissioners have gained knowledge and experience in their positions as Review Commissioners which has been of benefit in advising and assisting the Commission and its staff in carrying out the responsibilities and functions in relation to the Police Service.

As the Committee will appreciate, the matters subject to review are closely related to the responsibilities and functions of the Commission concerning the QPS.

The Electoral and Administrative Review Commission recommended in its *Report on Review of Appeals from Administrative Decisions* (August 1993) that the review jurisdiction of the Commissioner for Police Service Reviews be transferred to the proposed Public Sector Grievance Tribunal.

The Commission provided a submission to the Parliamentary Electoral and Administrative Review Committee in December 1993 strongly opposing any move to eliminate the position of Review Commissioner.

Further, it is understood that the QPS does not support any recommendation which would replace the Review Commissioners with a Review Tribunal.

It is to be remembered that the Review Commissioners have replaced the former Appeal Board described in the Fitzgerald Report as 'overly formal, legislative and cumbersome'. Most applications concern promotion and transfer. While their workload has been heavy, the Commissioners are generally able to hear applications within a few weeks of receiving the selection panel's report. The process is working well and is favourably regarded by those who come into contact with it.

Since the Review Commissioners commenced operations in June 1990, 1140 decisions have been handed down and 204 have either been set aside or varied. Only 13 of the recommendations for variation have not been accepted by the Commissioner of the Police Service.

APPENDIX C

STRUCTURE AND PROCESS OF THE COMPLAINTS SECTION

Introduction

The Complaints Section commenced operation in April 1990. The structure of the Section and the procedures adopted have not remained static since that time.

Rather, an ever increasing workload and a continuing commitment to strive for improved performance has led the Commission to frequently review and restructure its complaints handling functions.

In May 1992 the *Criminal Justice Act 1989* was amended to grant the Commission discretion as to which complaints it would investigate. The Commission developed a system whereby all complaints are carefully scrutinised upon receipt with a view to ensure that only those warranting a full investigation are referred to a team for that purpose. The rest are finalised by the Commission determining that no further action is warranted or they are referred to a more appropriate agency for consideration. The amendment to the Act was a catalyst for a significant change to the structure of the Complaints Section which was effected during 1992.

Before that restructuring of the Complaints Section, the initial processing and preliminary investigation of complaints was carried out by the Section's four teams, each comprised lawyers, investigators, complaints officers and support staff. With each team handling concurrently around 150 complaints, it was clear that the teams had become over-burdened.

A large proportion of matters with the teams required preliminary inquiries only. Compounding the workload was the continuing receipt of an average of 60 new matters each week, most of which were distributed to the teams for attention. The consistently high volume of new work flowing to the teams frustrated their ability to deal with the more substantial matters.

A major restructuring of the Complaints Section was therefore undertaken. The emphasis of this restructuring was the re-allocation of resources to the initial assessment process so that only the substantial matters requiring thorough investigation are now referred to the investigative teams.

The restructured Complaints Section is comprised of the following functional units:

- the Assessment Committee
- the Assessment Unit
- two Complaints Teams and
- the Registry.

The Assessment Process

Many complaints are disposed of without full investigation by the Commission because they:

- related to persons who do not hold a position in a unit of public administration;
- allege conduct which, even if substantiated, would not constitute misconduct or official misconduct;
- are minor matters to be referred to the QPS; or
- are not capable of being productively investigated.

Often, complaints cannot be so identified until the Commission undertakes some initial inquiries or conducts a legal analysis. The new structure enables this to happen soon after receipt without hindering the continuing investigation of matters of substance. The new process is statutorily underpinned by the recent amendments to s. 38 of the Act, which gives the Commission a discretion at two points in the complaints process namely:

- an initial discretion not to investigate at all; and
- a subsequent discretion not to investigate further.

The latter is the operative discretion which has facilitated the restructuring of the Complaints function. Because the Act defines 'to investigate' as 'to examine and consider' matters, the assessment and preliminary inquiry steps may well be construed as 'investigation' for the purposes of the Act. In any event, the Commission has long held the view that some investigation of all matters referred to it, even if peremptory, is far preferable to no investigation at all.

Preliminary Assessment

There are several ways in which complaints are received at the Complaints Section, namely:

- through the mail
- by personal interview upon presentation at the Commission
- by telephone call to a Complaints Officer
- after-hours referral through the Commission's 24 hour Communications Room.

The Principal Complaints Officer reviews all complaints upon receipt to see if any require urgent attention (such as serious recent assaults). These are attended to without going through the normal assessment process.

Registration

The Principal Complaints Officer prepares a schedule listing new matters. Upon registration each matter is allocated an identification number. The schedule shows the date of receipt and the name of the complainant and includes a precis of the allegations. It provides a useful tracking mechanism until files are made up and the details recorded in the database.

The Assessment Committee

Composition

The Assessment Committee comprises a Deputy Chief Officer, the Superintendent of Police attached to the Complaints Section, the Principal Complaints Officer and, at least once per week, the Chief Officer, Complaints Section, and the Director of Deputy Director of the OMD.

Role and Function

The Committee meets every day in the late morning. The Committee applies the criteria which have been agreed upon by the Commission and the PCJC to determine whether a matter should be investigated. If the Committee considers that a matter clearly requires investigation, it will be referred directly to a Complaints Team. This, however, will occur very infrequently as some preliminary inquiries almost inevitably need to be made. These inquiries are made by the Assessment Unit.

The Assessment Unit

Composition

The Unit is comprises a Deputy Chief Officer, who is the senior lawyer in charge of the Unit, four investigators, a legal officer, four complaints officers and two support officers. The Deputy Chief Officer has responsibility for matters referred to the Unit by the Assessment Committee and for the allocation of work in the Unit.

Role and Function

The primary function of the Assessment Unit is to conduct preliminary inquiries. In many instances, further information is required by the Assessment Committee to enable it to make a proper assessment as to whether a thorough investigation is warranted. The Unit therefore provides a dynamic working mechanism to quickly discover information to enable the Assessment Committee to make determinations. Where necessary, the Committee makes suggestions to the Assessment Unit concerning what preliminary inquiries need to be made.

Approximately 90% of all matters assessed by the Committee are referred to the Assessment Unit for attention. This attention includes the making of preliminary inquiries, the assessment of more difficult questions of jurisdiction, the examination of documentation and, if necessary, the request for and examination of further material. The Unit's inquiries may include accessing QPS files or court transcripts, telephone inquiries or correspondence. The Unit also attends to the administrative referral of matters to other agencies, including the QPS, for investigation. The Unit, therefore, attends to a large quantity of correspondence.

The majority of matters referred to the Unit are finalised within the Unit. If, however, the Unit believes that a more thorough investigation is required, it refers the matter

back to the Assessment Committee. If that Committee agrees, the matter is referred to a Complaints Team through the Chief Officer, Complaints Section.

A large number of the matters received are either outside the Commission's jurisdiction or do not reasonably raise a suspicion of misconduct or official misconduct. These matters are finalised in the Assessment Unit. This disposition is approved by the Deputy Chief Officer under guidelines of the Commission issued under s. 38 of the Act.

A significant number of matters received alleging misconduct are finalised as not substantiated on the basis of preliminary inquiries. Reports on such matters are presented to the Chief Officer, Complaints Section, for approval, but otherwise are effectively finalised within the Assessment Unit.

A number of matters continue to be identified as matters which can be referred to the QPS for investigation, either as matters of suspected minor misconduct (which, at the conclusion of the investigation, the QPS returns to the Commission for determination) or matters of possible breaches of discipline (which the QPS investigates and determines). These matters are referred to the QPS by officers of the Assessment Unit, thereby by-passing the Complaints Teams.

Assessment Unit investigators and the Deputy Chief Officer heading the Unit report daily, or as necessary, to the Assessment Committee to enable it to further consider how matters should be dealt with, in the light of the results of the preliminary inquiries.

When preliminary inquiries indicate large-scale, complex or ongoing misconduct, reports are prepared with a view to having the matter referred to a Multi-disciplinary Team for investigation. Other matters shown to be of substance are referred to Complaints Teams for investigation. The process of obtaining the information necessary for the Assessment Committee's determinations has facilitated a quicker resolution of most matters.

The Review Unit

When the Assessment Unit assesses a complaint against a police officer as involving alleged misconduct, as defined by s. 1.4 of the *Police Service Administration Act*, it can refer the matter to the QPS for investigation if it is of a minor nature. When these minor matters have been investigated by the QPS, a report is forwarded to the Commission for review and assessment. These reviews are conducted by the Review Unit.

The Review Unit has been established to review the completed investigation of such matters. The Review Unit monitors these minor complaints and advises the QPS on policy and procedural problem areas. This Unit ensures civilian oversight of matters not investigated by the Commission and is a source of advice as to how QPS investigations can be improved and complaints reduced.

On 7 May 1992 the QPS introduced new procedures concerning complaints involving breaches of discipline only. The Commission is still notified of the nature of the complaint. If the Commission agrees that the matter involves only an allegation of a breach of discipline, it is investigated and determined by officers of the QPS. The Commission also refers such matters received directly by its own officers to the QPS for investigation.

The Complaints Teams

When the Complaints Section was restructured in March 1992 there were three investigative Teams handling matters referred to them by the Chief Officer after they had come through the assessment process. Earlier that year, the Commission came to the view that the three teams were too small for the efficient handling of some of the matters which were being referred to them. Those teams each had an establishment of between four and six investigators but with recreation leave, long service leave and training courses side-lining officers, the teams were frequently left with only two or three investigators 'on deck'.

Further, as a result of growing refinement and expertise in the assessment process fewer small, one off matters and more significant on-going matters are now being referred to the Complaints teams. These larger matters require larger teams to expeditiously investigate them.

The smaller team structure also meant that the management function of the Team Leader was under-utilised.

The Commission has therefore recently amalgamated two of the complaints teams and brought back to the Complaints Section the officers who previously made up Multi-disciplinary Team 5.

The new complaints team now have between eight and ten investigators and they are co-operatively managed by a senior Legal Officer and a senior Inspector of Police. It is envisaged that this co-operative management system will maximise the efficiencies of the teams by providing the team managers with flexibility to call more assistance to bear on larger matters which warrant it whilst leaving them with the

capacity to detail a number of smaller matters to the larger number of investigators which now make up the teams.

The practice of only referring to the teams matters which have been thoroughly assessed as warranting further investigation will continue. By separating out from the Complaints teams the administrative task of determining whether a complaint is within the Commission's jurisdiction and/or whether it can be productively investigated, the investigative teams have been left to concentrate their energies on investigating matters reasonably giving rise to a suspicion of misconduct. This has resulted in a rapid decline of the backlog of unfinalised complaints matters.

Final Assessment of Complaints

Every complaint investigated within the OMD, by investigators within either the Complaints Section or a MDT, is made the subject of a report to the relevant Team Leader. Each report, together with the Team Leader's recommendation, is then referred to the Chief Officer, Complaints Section, for further assessment. The Chief Officer assesses each matter in accordance with s. 38 of the *Criminal Justice Act 1989* and the guidelines issued by the Commission.

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

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

Misconduct Tribunals have jurisdiction in relation to official misconduct by police officers. In relation to other public officers, a Misconduct Tribunal has jurisdiction only where the unit of public administration or the position concerned has been prescribed by Order-in-Council for the purposes of the Act. Upon receiving from the OMD a report stating that a matter involves official misconduct, a principal officer

must charge a prescribed person who is the subject of the report with the relevant official misconduct by way of a disciplinary charge. When no such prescription has been made, the report may be referred to the principal officer concerned for the taking of appropriate internal disciplinary action.

In many instances, although no disciplinary action is recommended, the matter is referred to the Commissioner of the QPS for officers who are the subjects of substantiated complaints to be chastised or corrected by way of guidance. This is not regarded as disciplinary action but as training.

Recommendations for Procedural Changes

A final assessment, whether resulting in disciplinary action or not, may involve making recommendations to the principal officer of the unit of public administration concerned that administrative changes be implemented or that certain directions be issued in order to obviate the occurrence of future complaints of a similar nature.

In many instances, the Commission regards the making of these recommendations as being a more significant outcome than any individual prosecution or disciplinary action.

APPENDIX D

PUBLIC HEARINGS

REPORTS OF COMPLETED INVESTIGATIONS IN WHICH PUBLIC HEARINGS WERE HELD

Report of an Investigative Hearing into Alleged Jury Interference March 1991 - (5 Sitting Days)

Genesis of Inquiry

In November 1990 allegations concerning approaches to prospective jurors for the trial of George Herscu were brought to the attention of the Commission by the Special Prosecutor and then by the Attorney-General. The Sheriff advised that some members of the jury panel had received telephone calls asking them what political parties they belonged to and what party they would vote for if there was an election 'right now'.

Allegations Investigated

- Whether such approaches had been made and whether they constituted any criminal offence.

Conclusions

- There was evidence of an approach to prospective jurors by the defence in the Herscu trial.
- That approach did not constitute contempt of court or other improper behaviour by members of the solicitor's firm representing Herscu or by counsel, or by agents engaged by them or by Herscu himself.
- There was no evidence of any unauthorised disclosure of information or like impropriety on the part of any officer employed by the Sheriff's Office.

Recommendations

- That, as an interim measure, a notice is issued by the Sheriff's Office with the summons to prospective jurors, warning that if any approach which is made to them causes any concern with respect to the discharge of their duties, they should immediately notify the Sheriff.

- That the Attorney-General establish a committee consisting of members of the legal profession and the community to consider the need for and extent of reform of the law relating to the distribution of jury lists and the inquiries which can be made in respect of prospective jurors.

(During final submissions on 15 January 1991 Counsel assisting the Inquiry recommended the preparation of an Issues Paper canvassing the need for and the extent of any necessary reforms in the laws concerned in the distribution of jury lists and the inquiries which could be made in respect of those on such lists. In March 1991 the Research and Co-ordination Division published an Issues Paper entitled 'The Jury System in Criminal Trials in Queensland'. The paper concentrates on the question of jury vetting, but also examines broader issues relating to the protection and privacy of jurors, majority verdicts, special juries, education of juries and improvement of trial procedures).

Report on a Public Inquiry into Certain Allegations Against Employees of the Queensland Prison Service and its Successor, the Queensland Corrective Services Commission
July 1991 - (24 Sitting Days)

Genesis of Inquiry

Statements of Ray Connor, MLA, in Parliament on 25 October 1990, 6 and 7 November 1990 alleging corruption and drug trafficking within the Queensland prisons and corruption within the Queensland Corrective Services Commission.

Articles also appeared in Queensland's major newspapers on 13, 14 and 15 December 1990 alleging 'Prisoners work as prostitutes', 'Prisoners in sex rackets' and 'Jail brothel probe'. The articles also alleged that senior QCSC officers were masterminding the rackets.

Allegations Investigated

- That inmates were being forced into prostitution by correctional officers.
- That a connection existed between correctional officers and brothels in Brisbane (presumably those which employed the inmates).
- That video tapes showing instances of drug trafficking within a Queensland prison existed and had been forwarded to a senior member of the staff of the prisons, but no action had been taken.
- That drugs were being distributed within correctional institutions and that officers of the QCSC were involved in such distribution.
- That officers of the Numinbah Correctional Centre were engaged in fraudulent practices and theft.
- Sundry other unrelated allegations.

One of the major achievements of the investigation was to clear the air by ventilating the allegations in a public forum.

Conclusions

- That correctional officers were not forcing inmates into prostitution.
- That there was no connection between correctional officers and brothels in Brisbane.
- That there had been no evidence of a 'cover-up' or impropriety by senior staff in the QCSC.
- That the video tapes did not evidence drug trafficking within a Queensland prison.
- That although drugs were being introduced into correctional centres, there was no evidence that officers of the QCSC were responsible.
- That there was insufficient evidence to substantiate the allegation that officers of the Numinbah Correctional Centre had been engaged in fraudulent activities.

Recommendations

- That the practice of allowing inmates on leave of absence to reside with correctional officers not be re-introduced;

- That the QCSC continue to monitor the adequacy of its measures to limit the introduction of drugs into correction centres during visits;

- That measures be taken to encourage correctional officers to understand the mass of changes taking place within the correctional system. (This had resulted in the establishment of a new guard and old guard and increasing pressures upon staff, particularly the old guard.)

Report on a Public Inquiry into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of Gold Coast November 1991 - (17 Sitting Days)

Genesis of Inquiry

In November 1989 the 7.30 Report made allegations concerning the relationship between Lewis Land Corporation Ltd and the then State Government and an Alderman of the Gold Coast City Council.

On 13 December 1989 information was passed to the Special Prosecutor that secret payments were made by Lewis Land to Aldermen and potential candidates.

The information was forwarded by the Special Prosecutor to Sir Max Bingham QC, then Chairperson of the Commission of Inquiry.

Allegations Investigated

- What was the extent of payments made by land developers to Aldermen or candidates on the Gold Coast?

- To whom were these payments made?

- Why were they made?

- Was there an attempt to keep confidential the fact of any payments? If so, why?

- Was any benefit sought or received by any land developer for the payment of the funds?

- Was any threat made or inducement given by any of the Aldermen or candidates?

- Was any Alderman or candidate compromised by any payment?

- Was there a likelihood that a payment may have tended to compromise an Alderman or candidate?

- Were any of the payments unlawful?

Recommendations

- That EARC consider the question of election funding in the Local Government electoral system.

- That legislation be introduced requiring compulsory disclosure of all donations made to Local Authority candidates, whether the donations were made in relation to election campaigns or otherwise received by any Councillor in the discharge of duties.

- That the *Local Government Act* and *Regulations* be reviewed and amended to ensure that it is clearly expressed that the pecuniary interests of Local Authority members and employees must not conflict with their duties.

- That time limits for prosecution and penalty options be reviewed.

- That Local Authorities be assisted in establishing a uniform and comprehensive code of conduct.

Report on the Investigation into the Complaints of Kelvin Ronald Condren and Others
November 1992 - (12 Sitting Days)

Genesis of Inquiry

On 15 August 1984 Condren was found guilty of murder. His appeal against conviction to the Court of Criminal Appeal was dismissed as was an application for special leave to appeal to the High Court. There were two petitions for pardon to the Governor. As a result of the second petition, the Attorney-General referred the matter to the CCA under s. 672A of the *Criminal Code*. On 26 June 1990 the CCA ordered that the conviction be set aside and, by a majority, recommended a re-trial. On 27 July 1990 a nolle prosequi was entered and Condren freed.

Upon his release, Condren and three of the witnesses who had given statements to the police about the murder made complaints to the Commission.

Allegations Investigated

- Condren alleged he had been assaulted and intimidated by police before he took part in the record of interview and that the record of interview had been largely fabricated by police, as had evidence of alleged oral admissions made by him to police prior to the record of interview.

- The other three persons all said that their police statements were false and obtained by intimidation, duress and, in the case of one of them, assault.

Conclusion

- The Commission was of the opinion that the available evidence did not justify referring a report on the matter for consideration of criminal or disciplinary charges.

Recommendations

- That Aborigines or Islanders under disability should not be interviewed for an offence unless an interview friend is present, that is:

- a representative of an Aboriginal Legal Aid organisation
- a legal practitioner
- a relative or other person chosen by the person being interviewed.

- A relative or other person chosen by the suspect should only be used as an interview friend if neither a legal practitioner nor a representative of an Aboriginal Legal Aid organisation is available.

- That the general instructions of the QPS be amended to provide greater assistance to police in determining whether an Aborigine or Islander is under a disability.

- That the general instructions be amended to provide clear directions to police that if there is any indication that a suspect is under the influence of alcohol or a drug, no interview should proceed until the issue is resolved by questioning the suspect as to recent alcohol/drug intake. The interview should be electronically recorded and if it is established that the suspect is so affected, the interview should be postponed.

- Other recommendations were made relating to the recording of interviews of such persons under disability and the way in which the interview should be conducted.

- That confessions that are not recorded by video tape or audio tape should not be admissible for an indictable offence unless the court is satisfied that exceptional circumstances exist.

- That in relation to written records of interview, all conversation must be recorded, including clarifying questions and no editing should take place.

Report by the Honourable W J Carter QC on his Inquiry into the Selection of the Jury for the Trial of Sir Johannes Bjelke-Petersen
August 1993 - (24 Sitting Days)

Genesis of Inquiry

On 28 December 1991 the Special Prosecutor wrote to the Chairperson of the Commission, expressing concern about the Bjelke-Petersen jury, in particular:

- Possible polling of potential jurors to ascertain their views on a political matter.

- Possible manipulation by the defence of the jury panels to ensure that the panel containing a potential juror favourably disposed to the accused was used.

- Possible misleading of the court by Senior Defence Counsel concerning a juror on the Bjelke-Petersen trial being affiliated with the ALP.

- Possible interference with the procedure for creating jury panels.

The fate of the trial had caused immense media and public interest centring upon the juror Luke Shaw and the Friends of Joh Organisation.

The trial judge also expressed his concerns.

Allegations Investigated

As contained in letter from Drummond QC.

Conclusions

The Honourable W.J. Carter QC concluded as follows:

- It was more probable than not that the panel of jurors was not polled as alleged or at the very worst, a few only may have been contacted.

- Both senior and junior counsel for Sir Johannes Bjelke-Petersen were falsely and deliberately misled by persons associated with the defence of Sir Joh into believing that the members of the panel had been polled to ascertain their views on a political matter.

- Senior counsel therefore inadvertently misled the trial judge into believing that it was inappropriate to use that panel and that other panels should be substituted.

- The purpose of those responsible for misleading senior and junior counsel was to effect the dismissal of that panel and thus make available the chance that

another panel, of which it was known that a person sympathetic to the cause of Sir Joh was a member, might be substituted.

- The procedures used to create prospective jury lists and jury panels were not manipulated to include the name of any person who was subsequently empanelled in the trial of Sir Joh Bjelke Petersen.

- No person employed in the Sheriff's Office or in CITEC improperly disclosed information concerning any juror who was subsequently empanelled in the trial. Senior Counsel for Sir Joh did not provide the trial judge with false information concerning a juror affiliated with the ALP in response to the application by the Crown to discharge the jury. The substance of the information provided by senior counsel was factually true and the source of the information was the person on the jury known to be sympathetic to the cause of Sir Joh.

- There was insufficient evidence available to show a prima facie case against any person in respect of whom a charge of official misconduct might be bought or to warrant the Chairperson of the Commission authorising a report to the Director of Prosecutions for consideration of prosecution proceedings.

Recommendations

- The practice of publishing jury lists by displaying them in any public place should cease.

- Copies of the jury list should be made available only to the Crown representative and the accused or his/her representative and to no other person before the trial commences.

- It should be an offence for any person who has possession of or control of the jury list to reproduce or distribute it.

- The jury list should only be made available at 4.00 p.m. on the working day before the trial commences unless the trial judge otherwise orders.

- Immediately the jury has been selected, the accused's copies of the jury list shall be returned to the Sheriff's officer who shall destroy same.

An Inquiry into Allegations of Lorrelle Anne Saunders Concerning the Circumstances Surrounding her being Charged with Criminal Offences in 1982 and Related Matters
April 1994 - (33 Sitting Days)

Genesis of Inquiry

The matter was originally raised by Saunders during the Fitzgerald Inquiry. A determination was made by the Commission and communicated to Saunders by letter dated 2 November 1989 that the matter would not be investigated because of the resources at the Commission's disposal and the more pressing demands upon it.

After further correspondence between Saunders' solicitors and the Commission, it was determined that an Inquiry would be conducted. However, owing to a dispute over the Terms of Reference and other prerequisites sought by Saunders, the Commission removed the matter from the Commission's public hearing list.

In February 1991 Saunders' solicitor, Carew & Co., approached the Parliamentary Criminal Justice Committee with a view to that Committee reviewing the Commission's decision in the matter. After consideration by that Committee, the Commission was advised by letter dated 12 December 1991 that the Committee had resolved to recommend to the Commission that the Commission investigate the allegations of Saunders.

Allegations Investigated

- The circumstances surrounding her being charged with criminal offences in 1982 and related matters.
- Whether any evidence was fabricated against Saunders and, if so, by whom?
- Was there a conspiracy to have any evidence fabricated?
- Whether any police officer improperly influenced or attempted to improperly influence witnesses to be called by the prosecution against Saunders.
- Whether any police officer or other person may have been guilty of any criminal offence, official misconduct or neglect or violation of duty in relation to the investigation and prosecution of Saunders.

- Whether Crown Law authorities had adequately carried out an investigation directed or requested by Mr Justice Shepherdson.

- Whether any police officer or any other person influenced or attempted to improperly influence the nature and extent of charges laid against the main prosecution witness against Saunders.

- Whether public records relating to charges against Saunders and others had been unlawfully disposed of and, if so, by whom and for what reason?

- Whether any person knowingly gave false, misleading or unsubstantiated information to the Queensland Government or its advisers when advice was sought on the question of compensation for Saunders.

On 8 April 1994 Mr Matthews furnished his report on the investigation to the Director of the Official Misconduct Division. That report was adopted by the Commission and furnished to the Minister for Justice and Attorney-General and Minister for the Arts, the Speaker of the Legislative Assembly and the Chairperson of the PCJC.

The report concluded that:

- No police officer had been involved in the fabrication of any evidence against Saunders. Three lay persons had conspired to do so. The main player, Douglas Mervyn Dodd, has been convicted and sentenced to a term of six years imprisonment.

- No person was guilty of any criminal offence, official misconduct, or neglect of duty in relation to the investigation and prosecution of Saunders.

- The Crown Law authorities had caused an adequate investigation to be conducted as requested by Mr Justice Shepherdson. This resulted in the successful prosecution of Douglas Mervyn Dodd.

- No person improperly influenced or attempted to improperly influence the nature and extent of charges laid against Dodd or the subsequent prosecution of him. He was the main prosecution witness against Saunders.

- There was no unlawful disposition of public records.

- No person knowingly gave false, misleading or unsubstantiated information to the Queensland Government or its advisers.

The report also concluded that there was not any justification for the payment to Saunders of compensation by way of ex gratia payment or otherwise. In the course of the report, scathing comments were made in relation to the credit of Saunders and, in particular, that Saunders had given evidence on oath which was untruthful.

Inquiry into the Death of Daniel Alfred Yock
March 1994 - (17 Sitting Days)

Genesis of Inquiry

Daniel Yock, a 17 year old Aboriginal youth, died on 7 November, 1993 at the Royal Brisbane Hospital shortly after being taken there from the Brisbane City Watchhouse.

In accordance with standing orders the Commission was immediately notified of the death and an on-call Inspector attended that night at the watchhouse and the City morgue to commence investigation.
In the initial stages the Commission was merely overviewing the matter. However, on the following day when a significant civil disturbance occurred outside police headquarters and allegations of police brutality to the deceased were raised the Commission decided to take over the investigation. The solicitors acting on behalf of the next of kin also requested the Commission to do this.

On 12 November 1993 a meeting of the Commissioners resolved that the investigation proceed by way of public inquiry.

Allegations Investigated

- Was there evidence of any criminal offence or misconduct by any member of the QPS in relation to the death?

- Did the relationship between the QPS and members of the Aboriginal community have a bearing on the circumstances of Yock's apprehension?

- Are any changes necessary to QPS policies, procedures or operational instructions in relation to apprehension and management of Aboriginal persons in similar circumstances?

Conclusions

In a report published in March, 1994 the Commission found that:

- There was insufficient evidence of any criminal offence or misconduct by any police member to warrant the initiation of any criminal proceedings or the taking of any disciplinary action against any officer.

- The relationship between the Police Service and members of the Aboriginal community did not have a bearing on the circumstances of Yock's apprehension.

- It was therefore unnecessary to consider whether any changes to procedures or operational instructions were necessary.

Recommendations

The Commission recommended that:-

- Some of the officers involved in the incident undergo further training in relation to the obligations imposed on any officer who has a prisoner in his or her custody.

- All officers be given training to ensure that an assessment of a prisoner's condition is made not only at the time of arrest but also at appropriate intervals whilst the prisoner is in custody prior to the arrival of the prisoner at the watchhouse.

- Urgent consideration be given to the establishment of a means of communication between the occupants of special purpose vehicles of the type used in this case and those imprisoned in the secure area of those vehicles.

- The procedures relating to the use of handcuffs be reviewed.

- The Police Service ensure that all serving officers has access to and study the contents of the custody manual.

- The critical incident debriefing procedure used by the Police Service be reviewed to ensure officers give their own recollection of events as soon as possible after an incident without it being tainted by recollection of others involved in it.

- A proposal for Beat Policing throughout West End Police Station be implemented.

CURRENT PUBLIC HEARINGS

An Investigation into the Improper Disposal of Liquid Waste in South-East Queensland
(40 Sitting Days to Date)

Genesis of Inquiry

On 6 November 1992 Drew Hutton brought to the Commission an informant who made allegations of industry-wide practices of dumping grease trap and hazardous liquid wastes into the sewerage system and elsewhere. He said this was facilitated by the corruption of public officials and that employees of a company for which he had worked were intimidated into taking part in the scheme.

Interviews with generators of liquid waste and transport drivers brought forward information which supported the complaint. There was, however, conflicting information from other persons. Because of the public interest, the size of the alleged problem, the lack of resources devoted to it by other bodies and the suitability of the Commission's hearings powers to resolve the conflicting information, the Commission decided to hold public hearings into the matter.

Allegations Investigated

- Dumping of grease trap and other hazardous liquid wastes into the sewer system and into non-functioning recycling plants.

- Corruption of public officials in State and local bodies to facilitate this practice and official misconduct by those officials in failing to take action over the dumping.

- That hazardous liquid waste from mine sites is not being disposed of correctly and that public officials have failed to take appropriate action.

- Companies dumping the wash out of medical waste bins to avoid Council fees for proper disposal.

Basil Stafford Inquiry
(53 Sitting Days to Date)

Genesis of Inquiry

Over a period the Commission received extensive information relating to alleged misconduct by staff at the Basil Stafford Centre. One officer was dismissed by a Misconduct Tribunal for assaulting one of the clients of the Centre. A police officer attached to the Child Abuse Section submitted a report requesting that the Commission's assistance be sought to investigate the conduct of officers at the Centre.

Allegations Investigated

- Abuse of clients by members of staff at the Centre.
- Gross neglect of clients by members of staff.
- Harassment and intimidation of staff or persons who have complained of or would be likely to complain of the abuse and gross neglect of clients.

Six matters of abuse and neglect were identified as being representative of the systemic problems allegedly existing at the Centre.

Public hearings are focussing on those matters. Attention will then be given to alleged harassment and intimidation of staff and other persons.

APPENDIX E

OTHER PUBLIC REPORTS OF COMMISSION INVESTIGATIONS

Report on the Investigation into the Complaints of James Gerard Soorley against the Brisbane City Council
May 1991

Genesis of Inquiry

On 17 April 1989 the Brisbane City Council invited tenders for the acceptance, transport, treatment and disposal of waste within the city of Brisbane. All seven tenders were initially rejected for non-compliance. Five were advised formally that negotiations with them would cease and negotiations continued with the remaining two tenderers. On 5 February 1991 the Brisbane City Council announced it would enter into the waste disposal contract with Pacific Waste Management Pty Ltd.

Also on 5 February 1991 Soorley, then an ALP candidate, released a media statement to the effect that a submission was to be made to the CJC calling for an urgent inquiry into the 'Liberal City Council's financial mismanagement of the Rochedale dump deal'.

Allegations Investigated

- Did Pacific Waste Management make improper payments to the Liberal Party or the Lord Mayor's Trust Fund?
- Was the town plan amended with a view to siting a dump at Rochedale and, if so, why was the land not purchased in 1987?
- Can it be implied from Pacific Waste's purchase of the Rochedale site before close of tenders that Pacific Waste had prior knowledge that its tender would be successful?
- Were the contract negotiations conducted in a biased or otherwise improper manner?
- Was the price of the land fill site ($14.2 million) corruptly or improperly inflated?

- Were tender costs improperly included by Pacific Waste in the agreed contract price?

- Were the fees payable for transporting refuse unduly favourable?

Conclusions

The Commission was satisfied of the following:

- There is no evidence of improper payments by Pacific Waste Management to the Liberal Party or to any trust fund administered by the Brisbane City Council.

- The relevant amendment to the Town Plan in 1987 was not made for any corrupt or any improper purpose.

- No inference could be drawn from Pacific Waste's purchase of the Rochedale site before the close of tenders, that Pacific Waste had prior knowledge of the ultimate outcome of the tender.

- The contract negotiations were conducted in an unbiased and impartial manner.

- There was no evidence to support any allegation of misconduct or corruption with respect to the price of the land-fill site.

- In relation to the last two allegations, in the absence of any evidence of official misconduct or corruption, no findings could be made in respect of the propriety or otherwise of the contractual arrangements.

Recommendations

- That where a preferred technical solution or preconceived development plan on a given topic has not been formulated, there should be a procedure for canvassing different solutions as a precursor to the receipt of competitive bids.

- The Council should compile and implement guidelines for officers involved in the tendering and negotiating process, specifically with respect to financial matters, and provide suitable training.

- That Council review the adequacy of financial resources applied to the evaluation of significant tenders and contract negotiations. Financial managers and suitable consultants should be engaged whilst the process is still in its preliminary stages.

Report on Complaints against Local Government Authorities in Queensland – Six Case Studies
July 1991

Genesis of Report

As at 31 May 1991, 198 complaints had been received relating to local government authorities (8.7% of all complaint matters). The six case studies related to a cross-section of local authorities and were chosen to indicate the scope of complaints relating to local authorities. The purpose of the report was educative and not punitive.

Allegations Investigated – Case Study A

- That a Council dealt exclusively with a car maintenance company because of secret commissions to a Council employee.

Recommendations

- That Council review its system for obtaining outside servicing of plant and equipment.
- That Council review all exclusive relationships with the suppliers and the relationships between purchasing officers and suppliers.
- That Council review its system of internal auditing to ensure detection of abnormal patterns of ordering and purchasing.

Allegations Investigated – Case Study B

- That the Shire Chairperson and two other Councillors had used their official positions to obtain from the Council grass slashing work for their private contracting businesses.

Recommendations

- That Council procedures relating to providing work to private contractors be reviewed and tightened.

- That tenders, quotations and expressions of interest be used when awarding same.

- That the pecuniary interest provisions of the *Local Government Act* be broadened to cover pecuniary interests not already covered, including interests in contracts.

- That the Local Government Audit Regulations be amended to prohibit the payee of a Local Authority cheque signing or countersigning that cheque.

Allegations Investigated – Case Study C

- Impropriety (including possible corruption and favouritism) in connection with a tender for the maintenance of refuse tips.

- Impropriety in relation to the awarding of a contract for the supply of furniture without tender.

Recommendations

- That the Director-General of the Department of Local Government be advised that evidence of breaches of s. 19 of the *Local Government Act* relating to the letting of contracts had been brought to light.

- That consideration be given to amending s. 19 to allow contracts made in breach of the tendering provisions of the *Local Government Act* to be voidable at the option of a person prejudiced.

Allegations Investigated – Case Study D

- That a Councillor with a pecuniary interest in a rezoning application had taken part in discussions of the Council concerning the application after disclosing his pecuniary interest.

- That the Councillor had carried out unauthorised work in the Division he represented and disguised the amount owing to him for the unauthorised work in an amount he claimed for authorised work.

Recommendations

- That the conflict of interest provisions in the *Local Government Act* be reviewed and widened and that time limits for prosecution and penalty options be reviewed.

- That Local Authorities be assisted in establishing a uniform and comprehensive code of conduct.

Allegations Investigated – Case Study E

- That senior officers of the Council were using official credit cards for entertainment and other expenses of a private nature with the concurrence of the Chairperson of Finance, an Alderman.

Recommendations

- That Council develop an official policy and detailed guidelines on the use of credit cards.

- That the Council Finance Committee be reminded of its responsibility to police the use of official credit cards.

Allegations Investigated – Case Study F

- That corruption and misconduct had occurred on the part of employees of the Council's Works Department and favouritism was being shown in the employment of truck owner/drivers hired by Council.

- That conflicts of interest existed in relation to Council employees who had interest in plant and machinery hired to the Council.

Recommendations

- That Council develop and enforce a comprehensive policy for contractual and trading relationships between the Council and its officers and employees.

- That procedures be introduced to ensure that officers responsible for contractual arrangements are aware of any contractual and trading relationship between the Council and any Council officer or employee and that controls exist to ensure the potential for conflicts of interest is minimised.

- That the legislation be reviewed to ensure it properly covers conflicts of interest of Council officers and employees.

- That Council conduct an independent review of the Works Department and its systems and procedures for the hire of truck owner/drivers and plant and equipment.

Report on an Inquiry into Allegations of Police Misconduct at Inala in November 1990
November 1991

Genesis of Inquiry

On 2 November 1990 150-200 persons (mostly Aborigines) attended a licensed function at Inala. Police were called and during a confrontation between police and Aborigines, altercations took place. Complaints were received that 10 persons were assaulted by police at the scene. Twenty Aborigines were arrested and five complained that they were maltreated at the Watchhouse. Further complaints of assault were received from three Aborigines who were arrested on 4 November 1990 one alleging he had been assaulted by police officers wearing balaclavas.

The matter was investigated by the CJC after it was referred by the Commissioner of the QPS and after complaints were received by representatives of the Aboriginal community at the Commission on 7 November 1990.

Allegations Investigated

Twenty-five allegations of police misconduct were investigated:

- Twelve allegations related to police misconduct outside the Wandarra Centre where the function was held.

- Nine allegations related to police misconduct at the Watchhouse after the altercations at the Wandarra Centre.

- Four allegations of assault were made by three Aborigines arrested on 4 November 1990. One alleged assault in the police car after arrest and the others alleged assault at the Watchhouse.

Conclusion

- Although the Commission was of the view that a number of people may have been the subject of unlawful assaults by police, inconsistencies and inadequacies in the evidence of witnesses on vital issues (such as identification) precluded any prosecution action.

Recommendations

- A number of recommendations were made for the purpose of improving liaison between police and Aborigines and Torres Strait Islanders. Included among these was that the QPS Aboriginal and Torres Strait Islander and Ethnic Liaison Section be increased and staffed with some officers who are from indigenous and/or ethnic communities.

- That a network of trusted representatives of the various indigenous and ethnic communities be established to be called upon to diffuse potentially dangerous situations.

- Junior officers should be instructed not to become actively involved in such incidents until an Inspector is in attendance, except where immediate intervention is necessary to prevent serious injury or other serious crime.

- Continuing regular liaison should take place between police and the Aboriginal community and other minority groups.

- All Queensland police should receive appropriate training to ensure they have a working understanding and appreciation of Aboriginal history, cultural and social behaviour and the ability to relate in a positive way to Aboriginal

people. Queensland police should be given adequate training in mediation and crowd control.

Report on the Investigation into the Complaint of T R Cooper MLA, Leader of the Opposition Against the Honourable T M Mackenroth, MLA, Minister for Police and Emergency Services
July 1991

Genesis of Inquiry

On 7 April 1991 Phillip Heath, MLA for Nundah was reported missing to QPS. On 8 April he was located in Port Macquarie, New South Wales. Mr Mackenroth, then Minister for Police and Emergency Services, was advised and he and his private secretary and Heath's father flew to Port Macquarie in a State Government aircraft. On 9 April the Speaker advised Parliament that he had received Heath's resignation, 'effective from 5.00 p.m. on 5 April 1991'. On 11 April 1991 Cooper, Leader of the Opposition, made a complaint to the CJC about the use of the Government aircraft. He also raised the matter in Parliament and the Premier stated that he endorsed Mr Mackenroth's actions.

Allegation Investigated

- It was alleged that, as Heath had resigned from 5.00 p.m. on 5 April, the use of the aircraft amounted to the utilisation of public funds to fly to the aid of a private citizen.

Conclusion

No recommendations were made, but the Commission reached the conclusion that the use of the Government aircraft did not amount to official misconduct on the part of any of the persons involved. The Commission was satisfied with the following:

- That Mr Mackenroth and the Premier considered that Heath's resignation would not take effect until 9 April 1991 and that it was appropriate for Mr Mackenroth to try to persuade Heath at a personal meeting to withdraw his resignation, thus avoiding the inconvenience and cost of a by-election.

- That both the Premier and Mr Mackenroth had a genuine concern about Heath's health.

- That Mr Mackenroth was the Minister responsible for authorising the use of the Government jet under the relevant guidelines.

- That both Mr Mackenroth and the Premier believed that a clear nexus existed between the use of the aircraft and the fulfilment of official duties and that such a belief was reasonable.

Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986-1989 Queensland Legislative Assembly December 1991

Genesis of Inquiry

The possibility that such abuses had occurred came to the Commission's attention when an article was published in *The Courier-Mail* on 10 December 1990, alleging that a former Auditor-General had raised the matter with the Premier, Mr Ahern, on 20 October 1988. The Commission confirmed that the information contained in the article was correct.

Allegations Investigated

- That Members of Parliament had misused their parliamentary travel entitlements.

Conclusions

- There was cogent evidence suggesting that the Parliamentary Travel Entitlements Scheme was abused by a significant number of the Members of the 1986-1989 Queensland Legislative Assembly. The evidence raised a strong suspicion that those Members used daily travelling allowances, in combination with other entitlements, to fund private excursions, on some occasions alone, but generally with their spouses, and often with family members.

- The opportunity for Members to misuse entitlements was enhanced by the poor system of accountability in place at the relevant time.

Recommendations

- That an accountable officer assume the responsibilities of the Clerk of the Parliament in respect of the accounts of the Legislative Assembly, the Parliamentary Service Commission and the Parliamentary Service.

- That the Members' Entitlements Booklet be fully reviewed and redrafted to take into account the recommendations of the Commission and any recommendations of EARC.

- That 'Travel for Members' and Spouses' entitlement be abolished.

- That a new section be included providing for Members' travel when claiming daily travel allowance.

- That conditions for payment of daily travelling allowance be tightened and that better proof of claims be required.

- That 'parliamentary business' be comprehensively defined.

- That a schedule of all journeys by members for which daily travel allowance was claimed be tabled in Parliament annually.

- That members be instructed as to their responsibilities by the accountable officer.

Report on an Inquiry into Allegations made by Terrence Michael Mackenroth, MLA, the Former Minister for Police and Emergency Services and Associated Matters
March 1992

Genesis of Inquiry

On 5 December 1991 the Commission published its report into possible misuse of parliamentary travel entitlements. On 10 December 1991 Mr Mackenroth gave a press interview and identified himself as one of the members referred to in the report and

announced his resignation from Cabinet. On 11 December 1991 a letter from Mr Mackenroth was delivered to Mr Newnham, casting doubts on Mr Newnham's leadership ability, integrity, loyalty and competence. On 11 December 1991 Mr Newnham referred the letter to the Commission under s. 2.28(2)(b) of the *Criminal Justice Act*. On the same day, in a media interview, Mr Mackenroth alleged further improper behaviour against Mr Newnham, namely, that he applied different standards in his decision not to prosecute Sir Max Bingham QC in one matter and to prosecute a sitting Member of Parliament in another.

Allegations Investigated

- That Mr Newnham had misused public funds relating to travel and that he had used such funds to pay for holidays and rest periods.

- That on some of these journeys he had been accompanied by his wife at the taxpayers' expense.

- That double standards were applied by Mr Newnham in respect of his decision not to prosecute Sir Max Bingham QC for unlicensed driving.

- That Mr Newnham was paid advance expenses by the AFP for a trip to Vancouver for which QPS paid for his ticket and that he did not repay QPS until the Inquiry raised the matter.

- That on three occasions the Police Department had paid the airfares for Mrs. Newnham to accompany her husband and no refund had been made.

Conclusions

Mr Loewenthal, the former District Court Judge who conducted the investigation, was satisfied of the following:

- The evidence did not show any misconduct by Mr Newnham in relation to the first three allegations.

- In relation to the fourth and fifth allegations, the material was sufficient to justify an investigation by a Misconduct Tribunal under the provisions of Division V of the *Criminal Justice Act*.

Recommendations

- The rights of persons, especially police officers' wives, to travel on police aircraft must be defined.

- Accounting procedures in the Police Financial Services Branch, especially with respect to recovery of funds, needs to be tightened.

- The right of the wife of a police officer to accompany him at Government expense must be defined.

- Mr Newnham should be charged with official misconduct.

APPENDIX F

CRITERIA TO BE CONSIDERED IN DETERMINING WHETHER CJC SHOULD INVESTIGATE

Degree of Seriousness of Alleged Misconduct

- Is the misconduct of a trivial or technical nature only?
- Are there any mitigating or aggravating circumstances?
- Would the consequence of prosecution action or disciplinary action be unduly harsh and oppressive or be likely to be regarded as such by most officers of the relevant unit of public administration?
- Would the investigation or resultant prosecution action or disciplinary action be perceived as counter-productive, for example, by bringing the law or the criminal justice system (or the disciplinary system) into disrepute?
- Does the alleged misconduct involve a group of persons acting in concert?
- Is the alleged misconduct of a continuing nature?

Public Interest

- Does the community have a genuine interest in having the matter investigated?
- If the matter is not investigated, what will be the effect on public order and morale?
- Does the matter relate to essential institutions such as the Parliament, the Courts or the QPS to the extent that public confidence in those institutions may be eroded if the matter is not investigated and the alleged wrong-doers brought to justice?

The Likelihood of the Commission being able to Conduct a Successful Investigation

- How stale is the alleged misconduct?
- Are there likely to be problems in locating or interviewing relevant witnesses?
- Is the complainant willing to co-operate with the investigation and any consequent prosecution action or disciplinary action?

No Investigation of Matters Pre-dating 22 April, 1990

- This ruling will be varied only in exceptional circumstances with the concurrence of the Director, Official Misconduct Division and/or the Chairperson.

What Resources are likely to be Committed to the Investigation if the Matter is to be Properly Investigated

- How long is the investigation likely to take?
- How many investigators and other personnel will need to be deployed in the investigation?
- What additional expense is required to undertake the investigation?

Special Circumstances Relating to the Alleged Wrong-Doer

- What is the age and experience of the alleged wrong-doer?
- What is the state of his or her physical and mental health?
- Has the alleged wrong-doer been convicted of or disciplined for misconduct of a similar nature, or been the subject of allegations of misconduct of a similar nature?
- Are there any other relevant personal particulars of the alleged wrong-doer?

The Prevalence of the Alleged Misconduct

- Is there a need to investigate and take prosecution action or disciplinary action by way of a deterrent, whether personal or general?

Is the State or any other Person or Body likely to be Entitled to Claim Compensation, Reparation or Forfeiture if Prosecution Action is Successful

Is any other Agency Investigating or Capable of Investigating the Alleged Misconduct

The Obsolescence or Obscurity of the Law or Rule Breached

- Particularly in relation to proposed disciplinary action, is the rule no longer generally complied with?

Is the Alleged Wrong-Doer Willing to Co-operate in the Investigation or Prosecution of Others or has the Alleged Wrong-Doer already done so, and if so, to what Extent

APPENDIX G

CURRENT CRIMINAL JUSTICE COMMISSION MONITORING AND OVERSIGHT RESPONSIBILITIES IN RELATION TO THE QUEENSLAND POLICE SERVICE

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
23(b)	Monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally.	Research Official Misconduct	Issues covered in Police Powers volumes. Complaints section continually monitors use and effectiveness of police investigative powers as reflected in complaints about abuse of these powers.
23(c)	Monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies including the office of the Director of Prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the *Legal Aid Act 1978*).	Research	Function relates to all criminal justice agencies, not just QPS; Forthcoming 'Status Report' on QPS response to Fitzgerald Inquiry recommendations presents data on funding and staffing levels.

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
23(d)	Overseeing criminal intelligence matters and managing criminal intelligence with specific significance to major crime, organised crime and official misconduct.	Intelligence	Intelligence Division regularly reviews significant BCI correspondence and activity reports. Audits CTS intelligence and filing procedures. Provides other advice and assistance. Division representatives meet regularly with senior QPS and BCI management officers.
23(g)	Monitoring the performance of the QPS with a view to ensuring that the most appropriate policing methods are being used consistently with trends in the nature and incidence of crime and to ensuring the ability of the QPS to respond to those trends.	Research Official Misconduct Intelligence	Main contribution of Research and Co-ordination Division to this area is via its involvement in the design and evaluation of the Toowoomba Beat Policing Project and Inala Project. Chapter on Community Policing in forthcoming 'Status Report' deals with appropriateness of some policing methods. Feedback on investigative methods provided via CJC involvement in JOCTF. Intelligence Division undertakes regular audits.

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
23(h)	Providing the Commissioner of the Police Service with policy directives based on the Commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources.	Research, via Commission	It has not been CJC practice to issue policy directives - views have been issued by less formal means.
23(i)	Overseeing reform of the Police Service.	Research Official Misconduct	CJC has played an active role in coordinating and overseeing implementation of Fitzgerald Inquiry recommendations. 'Status Report' will give an overview of progress of reform in QPS. See also entries under other sections.

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
23(j)	Reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (in particular, organised crime) and the efficiency of law enforcement by the Police Service.	Research	Overlaps with s. 23 (c) and (g). Discussion of these issues included in 'Status Report'.
23(k)	Reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the Report of the Commission of Inquiry relating to the administration of criminal justice, and to the Police Service.	Research	Function will largely have been discharged following release of 'Status Report' and proposed review of disciplinary and complaint procedures. Review of implementation of recruitment and training recommendations already completed.
29(3)(d)(i)	To investigate cases of alleged or suspected misconduct by members of the Police Service . . . that come to its notice from any source . . .	Official Misconduct	Through complaints investigation process; oversight of QPS complaints procedure; issuing of procedural recommendations.

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
56(3)(f)	To review on a continuing basis the effectiveness of program methods of the Police Department in particular: (i) compliance by the department with the Commission's recommendations or policy instructions.	Research Official Misconduct	As noted, Commission practice is not to issue policy directives; monitoring compliance with recommendations issued by OMD has been an OMD responsibility.
56(e)(f)(ii)	Community policing	Research	Community policing covered in 'Status Report'. Function discharged primarily via involvement in Toowoomba Beat Policing Project and Inala Shop Front.
56(3)(f)(iii)	Prevention of crime	Research	As above. Division also undertakes "one off" research projects with a preventive focus, e.g. 'Murder in Queensland'; 'Fear of Crime'; ARC Youth Crime project.

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
56(3)(f)(iv)	Matters affecting the selection, recruitment, training and career progression of members of the Police Service and their supporting staff.	Research Commissioners	Covered in report on Police Recruitment and Training (1993) and forthcoming 'Status Report'; ongoing involvement via recruit surveys; Part-time Commissioner R. Homel a member of PEAC; Part-time Commissioner B. Ffrench a member of Board of the Academy; Review Commissioners also perform oversight function in relation to career progression.
56(3)(g)	To review the use and treatment by the Police Service of intelligence information concerning criminal activity, in particular when required by the Intelligence Division to do so.	Intelligence	Function discharged by Intelligence Division; see notes in relation to s. 23(d).
56(3)(h)	To prepare for the Commission reports, and suggested directions to the Commissioner of the Police Service, relating to its findings in the course of discharging its functions and to its recommendations as to remedial action or appropriate response.	Research	Division provides Commission with regular updates on matters pertinent to QPS. As noted it has not been CJC practice to issue directions.

SECTION OF CRIMINAL JUSTICE ACT	NATURE OF RESPONSIBILITY	DIVISION(S) RESPONSIBLE	HOW DISCHARGED
58(2)(d)	Subject to the direction of the Commission to assume or, as the case may be, oversee (i) the performance of the role of the Bureau of Criminal Intelligence of the Police Service	Intelligence	See notes in relation to s. 23(d).
58(2)(d)	. . . oversee (ii) the Police Service's liaison with law enforcement agencies of the Commonwealth or any State or Territory and with the National Crime Authority	Intelligence	Informal feedback received from other agencies.

APPENDIX H

GUIDELINES FOR SELECTING AND CONDUCTING RESEARCH PROJECTS

CRITERIA FOR DETERMINING RESEARCH PRIORITIES

In determining its research priorities, the Research & Co-ordination Division will employ the following general criteria:

1. The proposed project must fall within the Commission's, and more particularly the Division's, statutory terms of reference, as set down in sections 23 and 56 of the *Criminal Justice Act 1989*.

2. The proposed project should relate to one or more of the basic goals set down in the Commission's Mission Statement.

3. The proposed project should be one which the Commission is clearly better placed to undertake than some other agency or research body. Examples of projects which might satisfy this criterion include:

    - Projects relating to the activities and operations of the Queensland Police Service. The CJC's statutory responsibilities in relation to the QPS mean that it is likely to have better access to – and understanding of – the organisation than are other bodies.

    - Projects relating to the activities of the CJC itself, especially those of a confidential nature. For instance, due to confidentiality requirements no other body would be able to carry out research on the Commission's complaints files.

    - Projects focusing on issues or problems which cut across the boundaries and interests of particular criminal justice agencies. Unlike other agencies, the CJC is not bound to any one part of the system and so can apply a broader perspective to many issues. Moreover, under the Act it has an obligation to work in areas where co-ordination of the activities of other agencies is required.

    - Projects which require resources and/or expertise not available to other criminal justice agencies or research bodies in Queensland.

4. The proposed project should not substantially overlap with any other research projects which have been, or are being, undertaken in Queensland or other Australian jurisdictions. Where there is prima facie evidence of overlap, a strong case must be made for why the Commission should conduct further research in the area, for example by showing that: there are significant methodological flaws in the other studies, there is a need to replicate earlier studies, or there are sound theoretical reasons for expecting that the proposed study will produce findings significantly different from those previously reported.

5. The project must be technically feasible and able to be completed within a reasonable time frame. It must not require the investment of resources disproportionate to the likely benefits to be derived from the research.

6. The project should directly assist in the development, implementation and/or evaluation of policy and practices in the area of criminal justice. It is not the Division's function to undertake 'pure' or basic research for its own sake.

7. Provided the above criteria can be satisfied, preference should be given to projects which can be undertaken in conjunction with other criminal justice agencies.

In formulating these criteria, the Division recognises that the Parliamentary Committee retains the authority, under section 21(3)(b), to require the Commission to report to it 'on any matter which concerns the administration of criminal justice'.

EVALUATION OF PROJECT PROPOSALS

Specific project proposals will be evaluated using a checklist derived from the above criteria.

1. What are the objectives of the project? What do we want to find out, and why? In particular, in what ways will the proposed project assist in the development, implementation and/or evaluation of criminal justice policy and practices in Queensland?

2. Does the project fall within the statutory terms of reference of the CJC and the Division and the goals set down in the CJC's mission statement?

3. Has related research already been undertaken in Australia, or is any currently underway? If so, why should the proposed project proceed?

4. Why is the CJC better suited to undertaking the proposed research than some other agency or research body?

5. Which criminal justice agencies are likely to have an interest in the research? Has contact been made with them to discuss the proposal? Are they doing any related work in the area? Would they be willing to co-operate in the study?

6. Has the proposal been discussed with other Divisions of the Commission which might have an interest in this area? Have they identified any problems or issues and, if so, how is it proposed to deal with them?

7. What data are required for the project? What method(s) will be used to collect these data: for example, textual analysis, interviews, large-scale surveys, quantitative analysis of agency records? Are the methods appropriate to the objectives of the proposed study?

8. Where access is required to data or records held by other agencies, or agency co-operation is otherwise needed (e.g. to interview agency employees) have the necessary approvals been obtained? If not, are there likely to be any problems in obtaining approval?

9. Where basic data collection is required (as opposed to secondary analysis of an existing data-base) approximately how many person days will it take to collect the data? What is the basis for this estimate?

10. Where it is proposed to use another agency's database, how difficult will it be to analyse the data using our machines and software? Does the database contain the required information? How reliable and comprehensive is this information?

11. Does the proposed study raise any significant ethical issues, such as possible breaches of confidentiality? If so, how is it proposed to deal with these issues?

12. Does the study methodology have the potential to cause undue embarrassment to the CJC, or to create difficulties in our relations with other agencies (e.g. by using intrusive questionnaires, or accessing sensitive information)? How is it proposed to deal with these problems?

13. Are there any possible external developments (e.g. legislative amendments, organisational changes, release of a report by some other agency) which could impact on the project and the validity and/or relevance of its findings?

ETHICAL RESEARCH STANDARDS

Research will be conducted according to ethical research guidelines similar to those employed by universities and other research institutions. This means, amongst other things, that confidentiality will be protected at all times, the purpose of the research will be clearly explained to subjects, and the methods used will be as non-intrusive as possible. The Division is currently developing a manual which will include a section setting out procedures for conducting ethical research.

CONSULTATION PROCEDURES

Interested agencies and organisations will be consulted at an early stage of project development on matters such as the focus of the project, the methodology employed, and the use which can be made of findings arising out of the project. Wherever possible, the Division will establish an advisory group to assist in the project – although, of course, final control over the project will be retained by the Division.

APPENDIX I

POLICY & PROCEDURES MANUAL

VOLUME 2

OFFICIAL MISCONDUCT DIVISION

23.14 PROCEDURAL FAIRNESS

23.14.1 General duty to Hold Open Hearings

The provisions of the Act impose a prima facie obligation upon the Commission to hold open hearings. Section 25(4) of the Act states that a hearing shall as a general rule, be open to the public but if, having regard to the subject matter of the investigation, or the nature of the evidence expected to be given, the Commission considers it preferable, in the public interest, to conduct a closed hearing, it may do so. This provision recognises the many benefits of holding hearings in public.

23.14.2 The Rules of Natural Justice

The principles of natural justice apply whether the Commission holds a hearing in public or in private. The application of the principles of natural justice depend on a whole range of circumstances which vary from case to case. Tucker LJ stated in **Russell v Duke of Norfolk (1949) 1 All E.R. 109** at page 118:

> the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.

In a nutshell, the duty of the Commission to apply the rules of natural justice is:

- to listen fairly to all relevant evidence relating to an issue;

  and

- before making any adverse finding of fact concerning any person, to give that person the opportunity to respond.

There is a common misconception that the rules of natural justice require that the technical rules of evidence be applied. This is not the case. Lord Diplock in **R v Deputy Industrial Injuries Commission; ex parte Moore (1965) 1 QB 486** at 488 stated that:

> the technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi judicial functions must base this decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be irrelevant.

23.14.3 Statutory Provisions Governing Procedure

The Commission's procedures for taking evidence in both public and private hearings are governed by Division 2 of Part III of the Act. These provisions, in summary, permit or require the following:

1. Section 88: The Commission may prohibit the publication of evidence if, in its opinion, publication would be unfair to any person or contrary to the public interest.

2. Section 92(1): The Commission is not bound by the rules or the practice of any court or tribunal as to evidence or procedure. Further it may inform itself on any matter and conduct its proceedings as it thinks proper.

3. Section 92(2): The Commission shall at all times act independently, impartially, fairly, and in the public interest; it shall act openly, except where to do so would be unfair to any person or contrary to the public interest; further, it shall include in its reports an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations.

4. Section 95(1): In any proceedings of the Commission a person concerned therein may appear in person or by legal representative, or by an agent approved by the Commission.

23.14.4 Procedures for Public Hearings

Within this statutory frame work which is very general in terms, the Commission has faced significant difficulties in formulating procedures which have general application to all of its public hearings. It has modified its procedures and will no doubt continue to modify them as experience or legal requirements dictate. It has and will continue

to be most receptive to submissions by bodies such as the Queensland Council for Civil Liberties, the Queensland Law Society and the Bar Association.

Clearly, there will always be exceptions to the general policy or standard procedures. Dispute will often arise as to whether any particular fact situation is an exception and further how the general policy or standard procedure is to be applied to any fact situation. Wherever practicable, the following procedures will apply:

1. Where a person is the subject of an allegation, that person will be given the opportunity to respond to the specific allegation in a formal interview prior to the evidence being led.

2. A notice of allegation will be provided to the person indicating when the evidence will be led and giving the person an opportunity to appear, either in person or by a legal representative or agent.

The notice of allegation will be formulated with sufficient particularity to inform the person to whom it is given of the nature of the allegation.

There will be occasions when prior questioning cannot be carried out or a notice of allegation cannot be provided because to do so:

- will prejudice the investigation;

  or

- is not practicable, regardless of the Commission's best endeavours.

In such circumstances, the Commission will consider suppressing the publication of evidence of the name of the person adversely mentioned and/or any other evidence which is likely to lead to his/her identification, until that person has had the opportunity to respond to the allegation.

3. The Commission will consider all applications for a private hearing or the suppression of the publication of evidence of the name of any person and/or any other evidence which is likely to lead to his/her identification.

4. In recognition of the requirements of natural justice, where the Commission hears evidence which may be the subject of an adverse finding against a person, it will endeavour to give that person the opportunity to respond to it and the right to cross-examine the person giving the evidence.

5. Where possible, the Commission will provide the opportunity for a person against whom an allegation is made, to make a brief response on the same day. If the person does not wish to avail himself/herself of this opportunity, the Commission will proceed with all due fairness.

6. Where possible, the Commission will undertake a sifting of the evidence before it is led in the course of a public hearing.

7. As the hearing process is inquisitorial in nature, it is the Commission's duty to seek out the truth. This may require testing a person's word by cross-examination. An investigation involving the examination of witnesses is not conducted properly or effectively if every statement made by a witness is accepted at face value. Thus cross-examination will be thorough, but fair.

8. In the case of a person wishing to give evidence, or of a person proposed as a witness by any person appearing or represented at a hearing, the Commission will generally require that a statement of the proposed evidence be provided for consideration by it prior to the calling of that evidence.

9. The summons to each witness will contain particulars of the subject matter of the investigation.

10. Each witness who is a person concerned in the proceedings has the right to appear in person, by legal representative or an agent approved by the Commission. Other witnesses may be given leave by the Commission to be represented by a legal practitioner or agent.

There will be circumstances when a person who is entitled to legal representation will not be permitted to have his/her first choice of legal representation. Supreme Court Justice G N Williams ruled in a recent decision that -

> If the person under investigation and the various witnesses called in the course of the investigation had the same legal representation then the public perception, rightly or wrongly but probably rightly, would be that the witnesses were not truly independent. The perception would be that the witnesses and the person under investigation had banded together in order to protect the latter. The results of any investigation carried out in those circumstances would hardly be received by the public as the product of an independent, impartial and fair investigation. In that way, there were reasonable grounds on which a bona fide belief could be based that to allow the particular representation sought would be likely to prejudice the investigation being carried out pursuant to the requirements of the Act.

In those circumstances, His Honour ruled that the Commission did not err in its decision not to allow the witness to be represented by the particular legal representative chosen by him.

11. The Commission will ensure that each witness (whether represented or not) is apprised of his/her rights and obligations under the Act.

12. In particular, the Commission will satisfy itself that each witness is apprised of the provisions of Section 96 of the Act by virtue of which a statement of information furnished by a person to the Commission, or a disclosure made by a witness before the Commission, after that person or witness has objected to furnishing the statement or making the disclosure on the ground that it would intend to incriminate him, is not admissible in evidence against that person or witness in subsequent civil, criminal or disciplinary proceedings, except in relation to proceedings for a contempt of the Commission or an offence of perjury.

13. The Commission will at times receive hearsay if it appears to be relevant to its inquiries. It may be that the publication of such evidence will encourage those with admissible evidence to come forward. Because the Commission appreciates that the publication of hearsay may adversely affect the reputation or livelihood of an individual, it will adopt the following guidelines in relation to it:

    (a) Make it clear prior to the introduction or during the receipt of evidence, that it may contain inadmissible hearsay which will be treated with circumspection by the Commission;

    (b) Request the media and all other persons present to characterise it as such in any publication of the proceedings;

    (c) Wherever possible, give persons who may be adversely affected by its publication, the opportunity to appear at the time and cross-examine the witness giving that evidence;

    (d) If a person is not, for whatever reason, in the position to make a contemporaneous response, the Commission may order the suppression of the publication of evidence of the name of that person and/or any other evidence which is likely to lead to his/her identification until such time as he/she has had an opportunity to respond;

(e) If the person who has been provided with this opportunity does not wish to take it up, the Commission will proceed with all due fairness;

(f) Where a person is adversely mentioned in hearsay evidence, the Commission will carefully consider prohibiting the publication of that evidence or evidence likely to lead to the person's identification.

14. By use of its powers under Section 88 of the Act to prohibit publication of evidence, the Commission will consider and where appropriate make orders suppressing the publication of evidence. Although not an exhaustive list, the following illustrates some of the considerations which might be taken into account in determining whether evidence should be suppressed:

- Where the public disclosure of information might impede law enforcement;
- Whether the public disclosure of information might involve risks to the safety of a witness or any other person;
- Whether the public disclosure of the identity of a person named in evidence might harm the reputation or well being of that person;
- Whether the evidence is relevant and cogent;
- Whether the nature and seriousness of the misconduct alleged justifies disclosure;
- Considerations peculiar to any person who is identified in evidence, for example, whether he or she was a minor at the relevant time;
- Whether a person has had or will have the opportunity to respond to the evidence or allegations;
- Whether the suppression of the evidence will deny other persons the opportunity to come forward to give relevant evidence;
- Whether trade or commercial secrets are involved;
- Whether the evidence is hearsay.

15. All public hearings will be:

- the subject of a report to the Chairperson of the Parliamentary Criminal Justice Committee, the Speaker of the Legislative Assembly, and to the Minister pursuant to Section 26(1) of the Act (This is subject to Section 27 of the Act);

  or

- dealt with pursuant to Section 33(2) of the Act by referring a report thereon to the Director of Prosecutions or as otherwise provided for by that Section.

23.14.5 Private Hearing Procedures

Where it has been determined that a private hearing is preferable, the procedures will follow as closely as possible those for public hearings. The Commission will consider any application for the hearing to be in public.

23.14.6 Non-publication Orders made or revoked during Investigative Hearings

Where a non-publication order being made, amended or revoked at a Commission investigative hearing, it is the responsibility of Counsel Assisting the Commission or where Counsel is not an employee of the Commission, the Team Leader/Investigator responsible for the relevant investigation to inform the Administrator of the hearings of the order, amendment or revocation.

APPENDIX J

EXTRACT FROM AN ORAL REPORT BY DIRECTOR OF INTELLIGENCE DIVISION TO THE PARLIAMENARY CRIMINAL JUSTICE COMMITTEE ON 12 JULY 1993

On 12 July 1993 the Parliamentary Criminal Justice Committee held its monthly meeting with the CJC in public. During that meeting the Director of Intelligence reported on matters relevant to Recommendation No. 4 of Report No. 18 as discussed in Chapter 10. The following text is an extract from the Director's report.

> As you are aware, the former Special Branch was subject to comment by Commissioner Fitzgerald in his report of July 1989. During his Inquiry, the Special Branch material was examined and the Special Branch was reviewed. The Inquiry concluded that the unit's systems were out of date and that its intelligence gathering capacity was limited. There was at that time and during the Inquiry considerable rumours that the unit engaged in politically inspired intelligence gathering. However the Inquiry was not able to substantiate those rumours. In his report at the conclusion of the Inquiry, Fitzgerald suggested that the Special Branch should be disbanded. That in fact happened in December 1989 and, at the same time as being disbanded, the records of the Special Branch were substantially destroyed.
>
> Following the closing of the Special Branch, the Police Service, together with the Commission, reviewed the need for certain functions previously performed by that unit to be continued under strict guidelines and supervision. These functions related specifically to the provision of protection and escort to important persons – commonly know as VIP's - when visiting the State of Queensland, and also to the gathering and receiving of information in relation to terrorist activities or what is today defined as politically motivated violence. As a result of that review, a new Counter-Terrorist Section was established to perform those functions. That Section exists within the Queensland Police Service. It performs its functions in accordance with a specific Charter which was prepared by the Police Service in conjunction with the Criminal Justice Commission and which was publicly released in June 1990.
>
> In a similar way to the criminal intelligence guidelines that I have described under which the Commission operates, the Charter provides specific controls in respect of the functions of the Counter-Terrorist Section and ensures that these functions are overseen by a Control Committee and also subject to regular audits by officers of the Commission. The role of the Section, I am sure the Committee will agree, is an important role in our community, and the Charter provides for those all important checks and balances to be in place. Despite the public availability of the Counter-

Terrorist Section's Charter, and despite frequent acknowledgment of the checks and balances that currently exist, the matter of the old Special Branch continues to be raised even though it has now been out of existence for almost three years.

The most frequent concerns expressed relate to whether or not former Special Branch files still exist. Maybe I can clarify this situation. It is true that a small number of the former Special Branch files have survived. However, it is important that the existence of those files is seen in the correct light. They comprise:

(a) documents pertaining to litigation which cannot be destroyed for that reason; and

(b) documents set aside for destruction which have been retained on the instructions of the State Archivist.

The documents are retained by the Counter-Terrorist Section. However they are non-operational and I stress that they only remain because of legal process. Under the Charter, and controls that are in place, material is regularly audited within the Counter-Terrorist Section to ensure that any material stored by the Section falls within its Charter and is current. Under those circumstances, any material that is discovered to be out of date or falling outside of the current Charter would be culled and destroyed. That procedure has not been possible in respect of the limited amount of old material currently subject to litigation or currently held on the instructions of the Archivist.

It is important to note that the activities of this Section are subject to the oversight of senior police officers and also to audits by the Commission and to the oversight of a Control Committee. The latter Committee is comprised of the Chairman of the Criminal Justice Commission, the Commissioner of Police and the Assistant Commissioner responsible for the Task Force. The Committee meets on a quarterly basis and monitors the operational work of the Section. In addition, the Intelligence Division of the Commission conducts audits on a six monthly basis to ensure that the section is:

(a) operating within their Charter;

(b) that material maintained is in accordance with that Charter; and

(c) that any material that is no longer useful is culled and put aside for destruction.

I think you will agree that the work of this Section is subject to a high degree of scrutiny. Its Charter is publicly available and there is nothing sinister about this Section's activities. Further confirmation of this has been available through the oversight of the Parliamentary Committee itself which you will recall has visited the

> Section to gain a first hand insight into its operations and to physically inspect the Section and its file room.

During subsequent questions from the Committee both the Chairman of the Commission and the Director of Intelligence expressed their confidence in the integrity of the officers working in the Counter-Terrorist Section. The Director of Intelligence concluded these comments as follows:

> . . . They are very dedicated officers who are working in a Section which commenced three years ago, or almost three years ago. It is a new section. I think we should put the past behind us. I think the old Special branch had the problems that were associated with this matter, and I might add that many of them were never confirmed to be real problems. I think there is a degree of myth that abounds in respect of the old Special Branch. I think it is time that we put the old Special Branch to bed in its true historic position and that we continue to oversee the functioning of the new Section which, through the auditing procedures, through the Control Committee and through a number of other checks and balances that are in place, such as the logging of incoming and outgoing material and the logging of surveillance and on who and where it is done, etc., are all available to be audited. I am fairly confident that the Section operates totally within its Charter and is doing an excellent job.

APPENDIX K

CJC v WHITSUNDAY SHIRE COUNCIL
(Appeals Nos. 27 and 31 of 1994)
Judgement of Court of Appeal

The *Criminal Justice Act 1989* provisions for the protection of whistleblowers are addressed in Chapter 2 and Chapter 11 of this submission. This includes a discussion of the decision of Demack J of the Trial Division of the Supreme Court on the Commission's application for an injunction to restrain the Council from taking any action to dismiss the Whitsunday Shire Clerk. Since the body of the submission was prepared, the Court of Appeal has delivered a judgement in respect of the Commission's appeal from the orders of Demack J.

In *CJC v Whitsunday Shire Council* (Appeal Nos 27 and 31 of 1994) each member of the Court of Appeal (Fitzgerald P, Pincus and McPherson JJ A) agreed with the Commission's submission that s. 119(1) of the Act requires that an application for an injunction be heard in chambers throughout its duration.

Only McPherson J expressly addressed the constitutional issue which was argued before the Court. He accepted that the relevant provisions of the Act were not inconsistent with the Federal Award, and therefore not invalidated by s. 109 of the Constitution.

However, subsequent to the hearing before Demack J the *Industrial Relations Act 1988 (Cwlth)* was amended to include a new section. The Court of Appeal considered that this gave rise to a question of whether the Supreme Court was deprived of jurisdiction to grant an injunction under s. 104 of the Act by virtue of the amendment. Because this involves matters arising under the Constitution or involving its interpretation the Court of Appeal had a duty not to proceed further unless and until it was satisfied that notice has been given to the Attorneys-General of the Commonwealth, States and Territories under s. 78B(1) of the *Judiciary Act 1903 (Cwlth)*. As this was a fresh matter, in respect of which such notice had not been given, the appeal was adjourned to a date to be fixed, with an order that the Queensland Attorney-General give such notice. The injunction restraining the Council from acting to terminate the Clerk's appointment or otherwise prejudicing her career was continued until the determination of the appeal. Further the lawyer representing the Council told the Court of Appeal that there is no present intention to dismiss the Clerk. Pincus J observed that he was doubtful whether there was good reason to treat her employment as presently under threat.

This decision does not alter the Commission's view of the amendments required to s. 119 of the Act.

In relation to the proposed amendment to clearly make s. 119(1) subject to s. 15 of the *Supreme Court Act 1892*, the Commission notes the remarks of Fitzgerald P that, in his opinion, consideration should be given to amending the section to give the court a discretion to proceed either in open Court, or in Chambers, according to what justice requires in each case. With respect, the Commission maintains its position that, if such proceedings in respect of their dismissal or victimisation were heard in open court, this would intimidate many prospective whistleblowers and discourage them from providing information to the Commission.

The decision does not have any bearing upon the Commission's recommendation in respect of s. 119(2) that the Act be amended to incorporate a specific procedural provision to govern all aspects of s. 104 applications.

The issues arising from the decision will be required to be addressed in the preparation of the Whistleblowers Protection Act.