

May 2011

Simple Effective Transparent Strong

An independent review of the Queensland
police complaints, discipline and misconduct system.

Report by the Independent Expert Panel

Simone Webbe | Hon. Glen Williams AO, QC | Felix Grayson APM

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Published by the Queensland Government, May 2011, 100 George Street, Brisbane Qld, 4000.

ISBN **978-1-921960-99-4**

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**Independent Review of the Queensland
Police Complaints, Discipline and Misconduct System**

13 May 2011

The Honourable Anna Bligh MP
Premier and Minister for Reconstruction
Level 15
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

We are pleased to provide herewith our final report, *An Independent Review of the Queensland Police Complaints, Discipline and Misconduct System*.

This review was a significant undertaking in an extraordinary short timeframe, but we deliver a foundational report for a Queensland police complaints, discipline and misconduct system that is simple, effective, transparent and strong.

We commend the report to you.

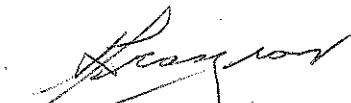
Yours sincerely



Simone Webbe
Reviewer



Hon. Glen Williams AO, QC
Advisor



Felix Grayson APM
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Independent Review of the Queensland Police Complaints, Discipline and Misconduct System

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1.0 INTRODUCTION

In 2009, the integrity and accountability reform process in Queensland highlighted a range of concerns affecting the credibility of the police complaints, discipline and misconduct system.

In response to these concerns, the Attorney-General requested the Crime and Misconduct Commission (CMC) in November 2009 *'to conduct an independent review of current processes for the management of police discipline and misconduct matters'* and deliver a report by 30 June 2010.

On 21 December 2010, the CMC report, *Setting the Standard*, identified four essential characteristics of a model police discipline system: it should be simple, effective, transparent and strong. The CMC made eleven recommendations to improve the complaints, discipline and misconduct system for the Queensland Police Service (QPS). Recommendation 3 of the CMC Report recommended that further work be undertaken to overhaul the current model by which the QPS and the CMC manage police complaints and disciplinary processes.

As the CMC had *'not recommended specifically how the model should be reformed to resolve many of the issues identified'*, the Queensland Government appointed an independent expert panel to consider recommendation 3 of the report and propose specific models that would address recommendation 3.

Recommendation 3 of the CMC Report:

... review the relevant policies and procedures, steps and processes in the current system for the management of police complaints and discipline with a view to :

- a. reducing the level of complexity in the system
- b. identifying clearer and simpler workflows for managing and dealing with misconduct and other inappropriate conduct
- c. identifying and developing strategies to address potential choke points in the system caused by inadequate resourcing
- d. identifying and assessing work-flow risks and articulating appropriate treatments
- e. incorporating the recommendations made in the audit report (Appendix C), and giving officers adequate training in conducting preliminary inquiries and making assessment decisions about complaints 'interwoven with court'
- f. putting timeframes on key steps in the process, and linking these to appropriate consequences to ensure a timely conclusion of the matter.

In addition, the terms of reference require the independent panel to:

- identify options, including a recommended option, for a model for the QPS management of police complaints, discipline and misconduct:
 - which are consistent with the principles identified in the CMC report: simple, effective, transparent and strong;
 - which address the issues recommended by the CMC; and
 - which will promote public confidence in the police complaints and police discipline system.

- identify options, including a recommended option, for the role of the CMC in the management of police complaints, discipline and misconduct, in particular:
 - how to ensure better decisions are made by CMC staff as to which complaints should be dealt with by the QPS, and the appropriate level of monitoring the CMC will conduct in relation to those matters;
 - how the CMC can best monitor how the police service deals with misconduct and official misconduct matters;
 - identifying cases which, if handled by the QPS, would attract criticism of actual or perceived bias on the part of the QPS and to determine whether such matters are being dealt with by the CMC and the QPS appropriately;
 - how the model will reduce double-handling of complaints by the CMC and the QPS; and
 - have regard to the learnings from projects that proposed a devolution model (Project Resolve and Project Verity).

- identify, where relevant, legislative and administrative reforms for (i) and (ii) above.

- consider any other issues that may be relevant, including for example:

Any issues relating to the prosecution of official misconduct in QCAT, including issues about claims of privilege from self-incrimination that could limit the CMC's ability to successfully prosecute matters against police officers in QCAT.¹

A Steering Committee was appointed to oversee the expert panel's review. The Steering Committee was chaired by the Director-General of the Department of the Premier and Cabinet, and included the Commissioner of Police and the Chairperson of the Crime and Misconduct Commission.

On 10 March 2011, the Premier made a ministerial statement to the Legislative Assembly announcing the appointment of an independent expert

¹ See Terms of Reference at Appendix B.

panel to review the policies and procedures, steps and processes in the current disciplinary system (the Review),

... following discussions with both the chair of the CMC and the Police Commissioner I have appointed a panel of independent experts to undertake the review recommended by the CMC report. The panel of experts will bring an impressive mix of skills and expertise to this task. Simone Webbe is a barrister and former deputy director-general of the Department of the Premier and Cabinet with extensive experience in models for good governance and accountability; Justice Glen Williams is a former Court of Appeal judge who was also chair of the expert panel that developed the model for the Queensland Civil and Administrative Tribunal which has jurisdiction over police disciplinary proceedings; and Felix Grayson is a retired police assistant commissioner who has worked at the CMC and has extensive experience in the handling and investigation of corruption and misconduct matters. I have asked the expert panel to provide me with a report by the end of April 2011. The government will then consider the report and respond to the recommendations together with the other recommendations of the CMC's original report, *Setting the standard*. In doing so, we will ensure that quick action is taken to implement an improved model for dealing with police misconduct.

I think that everyone in this House would endorse the view that the vast majority of Queensland Police Service officers every single day continue to serve the public across the state with the utmost integrity and commitment. My government is committed to supporting the thousands of police officers who do the right thing every day by ensuring that there is a fair and robust disciplinary system is [sic.] in place to deal with those few officers who do not meet the high standards of conduct and competence expected within our Police Service and thereby bring down the reputation of all of the others. Public confidence in the Queensland Police Service is fundamental to our integrity framework and we are committed to doing everything we can to support our Police Service in working to the highest standards of conduct and accountability.²

This Review is therefore tasked with continuing the recent work of the CMC in its *Setting the Standard* report.

Accordingly, this report is framed around the CMC's four essential attributes of simplicity, effectiveness, transparency and strength for a model system (chapters 5 and 6), and it addresses itself to the challenge of making recommendations on both the operational level of detail required by the CMC's recommendation 3 as well as the higher order policy considerations (chapters 4 and 7) posed by the terms of reference also seeking options for a model and respective roles that will promote public confidence in the management of police complaints, discipline and misconduct.

² Bligh, A.M., Ministerial Statement, Queensland Parliamentary Debates, 10 March 2011, pp. 515-516.

List of acronyms

AFP	Australian Federal Police
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
CEO	Chief Executive Officer
CJC	Criminal Justice Commission
CMA	<i>Crime and Misconduct Act 2001</i>
CMC	Crime and Misconduct Commission
CSS	Client Service System
ESC	Ethical Standards Command, Queensland Police Service
HRMM	Human Resource Management Manual (QPS)
ICT	information communications technologies
IT	information technology
PCMC	Parliamentary Crime and Misconduct Committee
PPM	Professional Practice Manager
PSAA	<i>Police Service Administration Act 1990</i>
QCAT	Queensland Civil and Administrative Tribunal
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
QPCOU	Queensland Police Commissioned Officers' Union
QPUE	Queensland Police Union of Employees
SDPC	(former) Service Delivery and Performance Commission (Qld)

2.0 EXECUTIVE SUMMARY

The Queensland police complaints, discipline and misconduct system is dysfunctional and unsustainable. Complainants and police are subjected to a complex, administratively burdensome, overly legalistic and adversarial process that is dishonoured by chronic delays, inconsistent and disproportionate outcomes. This is not news. Many reviews over decades before this one have found police discipline entrapped by a system malaise that produces the perfect paradox, which is that *despite* the priority concern of individual ethical police officers for a quick and fair response to complaints made against them personally, the organisation formed by majority of those same officers tends to overcook investigations, oblige protracted delays and unnecessary complexity, and operationalise injustice as it surrenders to the rules and expectations of a system that serves no one well.

Genuine organisational attempts and commitment to address the problems such as the recent hopeful trials for Project Verity have only served to increase frustration by their failure to progress a solution.

There is an intimidating gap between the current police complaints, discipline and misconduct system and the ideal model that is *'simple, effective, transparent and strong'* that was recommended recently by the Crime and Misconduct Commission in its report, *Setting the Standard*.

Subsequently, the Premier called for this Independent Review to consider the big picture for a better system anchored by a requirement to also deliver the operational detail - and promote public confidence.³

The objective of the devolution policy implemented under the *Crime and Misconduct Act 2001* was to effect *quicker remedial* responses to complaints through police management taking responsibility. In the decade since, neither remedial nor timely objective has been achieved. Implementation was flawed in essential respects because although the legal responsibilities and rationale moved to a capacity building intent for police to manage police conduct, the legislative and procedural complaints system itself remained an outdated and ineffectual dominant orthodoxy of discipline and punishment. Public confidence was compromised by more *'police investigating police'*. Public trust was undermined by long legalistic processes for possible retribution that excluded admissions, apologies, individual and organisational learnings.

This Review concludes that the police complaints, discipline and misconduct system in Queensland needs to correct its fundamental structural inconsistency with the policy objective of remedial intent; manage risk according to circumstances; and incorporate solutions beyond discipline and punishment such as a more responsive consideration of the needs of the complainant and restorative justice principles.

³ Terms of Reference at Appendix B.

Chapter 4 of this report examines past and present influences on public confidence, and includes recommendations to strengthen and protect critical relationships in the system. A new system is proposed in chapters 4 and 5.

The QPS and the CMC support the new approach. Assessment of police complaints into five categories currently would be reduced to three categories: Serious Misconduct Review, Misconduct Intervention, and Local Management Resolution. This typology of risk and treatment frames a firm intent *to remedy* the conduct of those officers who can be assisted through a targeted combination of remedial and punitive measures, but *to terminate* the employment of those officers who cannot be assisted and should no longer remain in the Queensland Police Service. This report details a new model that is simple, effective, transparent and strong.

Benchmarked timeframes provide for a significantly accelerated disciplinary process within six to seven months from receipt of complaint which is in dramatic contrast to the one to three (or more) years taken for the current disciplinary hearing process. This is achieved through a suite of measures directed at more efficient and effective assessments and investigations and includes implementation of a show cause procedure on the papers as well as centralising investigations at regional level instead of their current delegation to operational police on a part-time basis with excessive timeframes.

A broader range of more serious sanctions are recommended as may be required. There would no longer be a power to suspend a sanction of dismissal. *Remedial Intervention* and record of sanctions would remain on officers' personnel files and be transferred with them as they move to other areas within the QPS, whilst supervisors are *key* to managing conduct better.

The CMC oversight role is strengthened through a new adjudicative power to substitute a different disciplinary decision, as well as a right of appeal to the Queensland Civil and Administrative Tribunal for police misconduct, including in respect of a QPS decision to not commence a disciplinary proceeding.

Publication of substantiated disciplinary information under the new system in respect of the serious cases of dismissal or demotion marks a contemporary approach in transparency and accountability. Similarly, a special joint annual report by the QPS and the CMC to the Parliamentary Crime and Misconduct Committee in the nature of an *Ethical Health Scorecard for QPS* is recommended in providing a comparative whole account of the system's performance in the context of the broader integrity system.

Implementation of critical enabling systems for quality performance management, and knowledge management through a fit for purpose complaints and discipline information technology system, is urgent.

Chapter 7 identifies risks, success factors and public confidence improvements in the change program ahead and concludes that with a groundswell of expectation for change, the reform moment is now.

3.0 BACKGROUND

With one quarter of all police complaints now made by police, the police complaints, discipline and misconduct system for the Queensland Police Service in 2011 is significantly different to that which Fitzgerald reported on in 1989.

There have been many reviews in the years since the Fitzgerald Inquiry which have also influenced the ongoing development of the QPS discipline system making a range of recommendations to improve the system's efficiency and effectiveness (see Appendix D of the CMC *Setting the Standard* report, pp, 147-158).

Chapter four of this report considers recent developments in the police complaints system through a public confidence lens.

The present Review may be regarded as the third instalment in the recent review effort and consultation processes to improve public confidence in the police complaints, discipline and misconduct system:

- In 2009, the Queensland Government conducted a comprehensive public consultation process on the discussion paper, *Integrity and Accountability in Queensland*, involving public submissions, regional and online forums and advice from a round table of experts. This process identified a range of concerns with the police complaints system which required further review.
- In 2010, the CMC *Setting the Standard* report noted its further consultation with stakeholders in reviewing the current processes in managing police discipline and misconduct matters and recommended further review of policies, procedures and processes.

Methodology

This Review has been conducted by an expert panel led by Simone Webbe as Reviewer, with the advice and support of the Honourable Glen Williams AO, QC and Felix Grayson APM as Advisors.

The review timeframe was under seven weeks from the announcement of the review by the Premier on 10 March to delivery of a draft report to the Steering Committee by the due date of 27 April 2011. This was an extraordinary short timeframe within which to conduct a review of this import and scope, including on matters involving specialist and technical detail, and in a context of a system '*plagued*' by '*recurring themes and persistent problems*'.⁴

⁴ Crime and Misconduct Commission, *Setting the Standard: A review of current processes for the management of police discipline and misconduct matters*, December 2010, p. 10. (Hereinafter referred to as CMC Report.)

Submissions by the QPS and the CMC on the 27 April draft report were received on 6 May 2011 in accordance with the Steering Committee's timeframes, although consultations continued in the interim. The expert panel considered the QPS and CMC submissions and made its final report available to the Steering Committee on 13 May 2011, as requested.

Whilst the short review timeframe necessarily limited the research methodology to a review of existing material, that analysis was well supported by the availability of a range of primary and secondary sources. These included the discussion paper process calling for public submissions in the Government's recent integrity and accountability reforms and the CMC's review of the police discipline system in 2010, an extensive focus group process (utilising the Nominal Group Technique) for 37 groups involving 538 QPS participants throughout the state and representing all ranks and classifications from Chief Superintendent to AO2 level, with the majority of the participants (437) from Inspector to Constable including First Year Constables (the Focus Groups). The *Report into the focus groups conducted as part of the CMC/QPS Discipline Review (28 January - 26 March)* provided ready access to a quality cross-section of QPS perspectives on the detail of how the system works in practice.

In addition to an extensive literature review and a review of the body of reports in Queensland concerning police complaints from Fitzgerald since, this Review also considered a range of available reports, submissions, policies and legislation in respect of the substantial reform effort in other Australian jurisdictions and internationally over the past decade.

Consultations were also conducted directly with officers in the QPS and the CMC, as well as with past officers with a wealth of experience from the relevant agencies. The QPS and the CMC were also invited to submit papers in response to particular review questions which were copied to Steering Committee members and supplementary papers were made in response for the Review's further consideration and ongoing consultations.

Although the Review timeframe was tight, key stakeholders were invited to make submissions to the Review in similarly tight circumstances. However, the expert panel adopted a flexible approach in receiving submissions until quite late in the review process. *Appendix C* lists the stakeholders who were invited and the submissions received. The panel also met with the Queensland Police Commissioned Officers' Union, the Queensland Police Union of Employees, and the Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, to discuss their written submissions in more detail and seek additional perspectives on matters under consideration in the review.

The Review also considered the relevant policies, procedures, steps and processes described by officers in the agencies and documented by the various manuals and policy documents provided to the panel.

Acknowledgements

The independent panel's review of the police complaints, discipline and misconduct system in Queensland was conducted in the most unforgiving of short timeframes. The panel expresses its gratitude to all internal and external stakeholders consulted for their cooperation and provision of access to information under such time pressures. The panel acknowledges the role of the Steering Committee and is especially grateful for the keen participation and commitment to the Review shown by officers, both past and present, from the member agencies: the Queensland Police Service, the Crime and Misconduct Commission, and the Department of the Premier and Cabinet, which also provided efficient secretariat support to the panel.

Finally, the Reviewer wishes to acknowledge the wisdom and experience so generously shared by the Advisors on the panel, the Honourable Glen Williams AO, QC and Felix Grayson APM, who both made extraordinary efforts in supporting such a significant endeavour achieved on time.

4.0 PUBLIC CONFIDENCE

*'With Honour We Serve'*⁵

Whether the community trusts police to serve according to acceptable standards of conduct for which they will be held accountable is fundamental to the credibility of the police integrity system, and ultimately to the legitimacy of police in the exercise of police powers and responsibilities.

That public confidence in the police complaints system is in the public interest is the one proposition that unites stakeholders. Consistently throughout this Review, consultations and submissions from stakeholders contended for a better system and better outcomes to improve public confidence. The various elements of this Review's terms of reference concern an overriding imperative to improve public confidence. As do the concluding words in the CMC report, *Setting the Standard*, from which this Review is advanced,

Complaints management must be core business in the QPS, because public confidence in the police service is not merely important, it is central to its capacity to do its job.⁶

The relevant literature commentates on the typical cycle of reform for police complaints systems that responds to a crisis of public confidence as its trigger.⁷ The controversy that leads to reform, however, need not be represented by a single critical moment of 'police scandal' because public concerns also accumulate and increase after a series of controversial incidents. That is, calls for reform can be provoked by a 'culmination of growing public dissatisfaction' as much as they can by a single defining event.⁸

For Queensland in 2011, both conditions have acted on the state of public confidence compelling an independent review of the system for Government. In the first instance, the tragic death in custody on Palm Island more than six years ago and the nature and extent of responses that continued until determinations only recently stake a primary claim on the toll to public confidence in the system charged with responding to critical incidents and complaints against police.

⁵ Queensland Police Service Motto.

⁶ CMC Report, p. 98.

⁷ Goldsmith, A., 'New directions in police complaints procedures: Some conceptual and comparative departures', *Police Studies*, Vol. 11, no. 1, 1998, pp. 60-71, p.60.

Smith, G., 'A Most Enduring Problem: Police Complaints Reform in England and Wales', *Jnl Soc. Pol.*, 35, 2005, pp. 121-141, pp.124-127.

Seneviratne, M., 'Policing the Police in the United Kingdom', *Policing and Society*, 14:4, 2004, pp. 329-347, p. 334.

Landau, T., 'When Police investigate police: a view from complainants', *Canadian Journal of Criminology*, 1996, pp. 291-315, p. 292.

⁸ Smith, op. cit., p. 126.

The second influence on the public's confidence in the police integrity system has been the range of damaging accounts in the media or in formal review reporting of police conduct, including but not limited to the CMC's Operations Grinspoon, Tesco, Capri and the suggestively-titled *Dangerous Liaisons* report. Although it should be acknowledged that it was the oversight mechanism in the system itself that identified these concerns with police conduct and responses.

Individually and collectively, the significance of both influences on public confidence in Queensland has been stated in the gravest of terms.

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) in its submission to this Review recounted claims that the events that followed the Palm Island tragedy will take, '*relations back to their darkest days*' and warned that,

The extent of ill-feeling and distrust in Queensland Indigenous communities towards the police cannot be under-stated. Indeed, this distrust does of itself often generate scenarios where public-nuisance type offences involving police interactions, arise.⁹

The Queensland newspaper, *The Courier-Mail*, in reaction to a range of disciplinary matters, opined,

It is difficult not to wonder whether the worse the offence, the greater the potential for embarrassment and the more highly ranked the participants, the lighter the penalty in the police service.¹⁰

Public confidence in the police service is not the same as public confidence in the police complaints system. However, they are regarded as directly relational. The poor management of complaints can impact adversely on public confidence in police generally, and the truism for those working in the system is that a low public perception of police in the general sense will encourage more complaints against police (and that less complaints are received when police enjoy a more positive public image).¹¹

The nexus between complaints and perceived performance is unsurprising but to what extent does a public profile of police wrong-doing and a perception of inadequacy in response contribute? It is possible at least that the level of public confidence in any period becomes a driver of public confidence of itself. Therefore, strategies in seeking to improve public confidence might be well-

⁹ Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS), submission to the Independent Review Panel, 1 April 2011, p. 12.

¹⁰ Sweetman, T., 'Queensland Police Service is mired in blind justice', *The Courier-Mail*, 18 March 2011, accessed on 18/3/11 on <<http://www.couriermail.com.au/news/opinion/queensland-police-service-is-mired-in-blind-justice>>

¹¹ Between 2008-09 and 2009-10, there was a 23% increase in the total number of allegations made against QPS members. This coincided with growing concerns in the media relating to police in significant events such as Taser use.

Also, public perceptions of police contribute to public cooperation, crime prevention and police effectiveness (references omitted): CMC, *Public Perceptions of the QPS*, 2009, p. 59.

advised not to ignore the potential that a broader account of affairs can offer in toning perspectives and short-circuiting a self-perpetuating negativity.

Without detracting from the seriousness of misconduct breaches, a broader account of performance finds that approximately one complaint is received out of every 1,700 individual interactions with the public.¹² Of those, less than 0.02% are substantiated in a disciplinary hearing. For a workforce of approximately 11,000 police officers conducting more than 5.2 million interactions with members of the public over a 12 month period, there were 2,939 complaints received in 2009-10.¹³

Without detracting from the seriousness of the allegations for example raised in Operation Tesco, a major covert investigation into police misconduct on the Gold Coast that concluded with a public hearing and generated damaging media headlines for public confidence such as 'Biggest Police Scandal since Fitzgerald',¹⁴ one police officer was charged (with two counts of possession). A range of system improvements were made following the Operation but the CMC determined that there was no suggestion that Queensland was returning to the days of entrenched serious misconduct.¹⁵ Operation Tesco might have been a good news story on how the anti-corruption and misconduct system was working.

The 37 focus groups in 2010 involving 538 participants from the QPS reported concerns,

... in respect to how the adverse conduct of a minority of officers can rapidly tarnish and undermine the overall reputation of the Queensland Police Service, and that of individual officers. Clearly, during the time of this review, participants felt the issues emerging from the Gold Coast affected community perceptions of police throughout the State.¹⁶

There is a valid argument to contextualise outbreaks in a crisis of confidence in the police complaints system against a bigger picture of general public confidence in police.

In stark contrast to the police force that Fitzgerald critiqued in 1989, public confidence in the Queensland Police Service of 2011 has been positive and sustained over a period of years. CMC survey research also shows that since 1999, less than 20 per cent of survey respondents agreed or strongly agreed with the statement, '*There is no point in reporting corruption in the Queensland Police Service because nothing useful will be done about it*'.¹⁷ The general satisfaction with Queensland police is 75.6% in the *National*

¹² Queensland Police Service, Annual Report 2009-10, p. 39.

¹³ *ibid.*, p. 39.

¹⁴ 3 February 2010, Gold Coast Bulletin, accessed 17 April 2011

<http://www.goldcoast.com.au/article/2010/02/03/184581_gold-coast-news.html>

¹⁵ Crime and Misconduct Commission, Annual Report 2009-10, p. 20.

¹⁶ QPS, *Report into the Focus Groups conducted as part of the CMC/QPS Discipline Review* (28 January - 26 March 2010), p.36. (Hereinafter referred to as Focus Group Report.)

¹⁷ CMC, *Public Perceptions of the QPS Public Attitudes Survey*, 2009, pp. 55, 58.

Survey of Community Satisfaction with Policing (July 2010-March 2011), which has Queensland police above the national average according to satisfaction questions regarding police interaction with the community.

An understanding of the 'volatile environment' and some of the circumstances in which police operate will assist a balanced perspective of police complaints.

Allegations of misconduct often overshadow the countless acts of self-sacrifice and heroism performed by Australian police on a daily basis. These acts occur at all levels of law enforcement but primarily are found in front-line public policing. Misconduct allegations also overshadow the victimisation of police that occurs on a regular basis in the form of injuries and abuse. Research indicates general duties police can expect to be punched and scratched at least three times each year. Police also face the prospect of being assaulted, sometimes seriously, during the course of their duties.¹⁸

The ATSILS also made the point very clearly in its recent submission, and on the basis of four decades of practice at 'the coalface of the justice arena', that their concerns,

...were not cast with the vast majority of police in mind; namely, those who perform a highly demanding role in often trying circumstances, with honour and integrity... Rather, our submissions are based upon our first-hand experiences and are aimed at that small percentage of serving police officers who tarnish the otherwise good name of the Police Service.¹⁹

4.1 "Police investigating police"

Key to public confidence in a police complaints system is how the 'who investigates' fundamental is addressed. The community, police and complainants, expect a system that protects against real or perceived conflicts of interest so that allegations made against police are investigated fairly and impartially.

More than 20 years ago, Fitzgerald found that the total loss of public confidence in performance by the then Police Complaints Tribunal was justified and that the police internal investigations section had been '*woefully ineffective*' and a '*friendly, sympathetic, protective and inept overseer*'.²⁰ Both the tribunal and the internal investigations section were abolished under the Fitzgerald reforms, in favour of an independent body with resources and powers as overseen by Parliament through a dedicated all-party committee. That independent body was the Criminal Justice Commission (CJC) which

¹⁸ Sarre, R. and Prenzler, T., 'Policing Corruption: An Australian Perspective', *Policing Corruption: International perspectives*, Sarre, R., Das, Dilip, K., Albrecht, H., Le, 2005, pp. 225 - 236, p. 231.

¹⁹ ATSILS submission, op cit., pp.1-2.

²⁰ Fitzgerald, G. E., Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, 1989, pp.289, 292. (Hereinafter referred to as the Fitzgerald Report.)

became operational in 1990, and was described as one of the '*most powerful oversight agencies in the world*'.²¹ The CJC was to safeguard community confidence by ensuring integrity and independence in the system.

In 2001, new legislation replaced the CJC (and the Queensland Crime Commission) with the Crime and Misconduct Commission, and conferred a significant change in approach to its role in dealing with complaints against police in the pursuit of timeliness and capacity building. Primary responsibility for dealing with police misconduct returning to the Commissioner of Police and implementation of the principle of devolution under s.34 of the *Crime and Misconduct Act 2001* refocussed the independent watchdog activities towards less investigations by the CMC in favour of more investigations by the public sector agencies (including police). As a counter-balance the CMC's monitoring regime was expanded and included a power to assume responsibility over a case being handled by an agency; and the CMC was obliged to take a lead role in building the capacity of agencies to prevent and deal with cases of misconduct effectively and appropriately.²²

In 2001, the CJC investigated 300 cases across the Queensland public service. By 2010, the CMC investigated 63 cases, of which 33 investigations were complaints against police.²³ In 2009-10, the QPS managed 2939 complaints including 642 that were subject to investigation.

The current criticisms affecting public confidence due to 'police investigating police' relate a view that devolution has gone too far.

Academics warn that devolution has '*drawn the ire of journalists, academics and lawyers as a return to the pre-Fitzgerald days of 'Caesar judging Caesar*'.²⁴ The devolution strategy '*could have detrimental consequences for community confidence in the public sector complaints process and hence the reputation of the CMC as an effective public sector accountability institution*'²⁵; it is viewed and mistrusted as '*akin to a jury system, wherein the entirety of the jury is made up of family and friends of the accused*'.²⁶ A long-term experienced journalist described devolution as '*a dismal failure of an experiment*'²⁷ and retired Supreme Court Judge Bill Carter, who chaired two investigations into police corruption in the 1990s has called for '*an end to the practice of 'cops investigating cops*".²⁸

²¹ Prenzler, T., *Police Corruption: Preventing Misconduct and Maintaining Integrity*, CRC Press, 2009, p. 157 (citing Harrison and Cuneen 2000).

²² *Crime and Misconduct Act 2001*, ss. 34, 45, 47, 48.

²³ CMC, February 2011.

²⁴ Prenzler, T. and Faulkner N., 'Towards a Model Public Sector Integrity Commission', *The Australian Journal of Public Administration*, vol. 69, no. 3, 2010, pp. 251-262, p.253.

²⁵ Lewis, C., 'Crime and Misconduct Commission: Moving Away from Fitzgerald', *The Fitzgerald Legacy: Reforming Public Life in Australia and Beyond*, Lewis, C., Ransley, J., Homel, R., Australian Academic Press, 2010, pp. 57-81, p. 68.

²⁶ Walsh, T (2008 submission to the PCMC) quoted in Prenzler and Faulkner, op. cit., p. 256.

²⁷ Koch, T., quoted in Lewis, op. cit., p. 73.

²⁸ Quoted in Lewis, op. cit., p. 73.

The Queensland Law Society in its submission to this Review conveyed the considerable alarm of its criminal defence members,

... the public credibility of the police complaints process especially in relation to matters which are fully investigated by the QPS itself has reached a low point if not equal with the lack of credibility of the complaints process at the time of the 1989 Fitzgerald Report and certainly considerably tending in that direction.

... [the Review] should be aware of the widely held view among many criminal defence solicitors in Queensland that complaints investigated within the QPS appear to be frequently carried out so that an outcome satisfactory to the officer complained against is obtained.²⁹

Stakeholders consulted during this Review submitted that an investigation that is not perceived as independent does the honest police officer of good conduct no favours at all. In a genuine case where there was no breach of discipline or misconduct, a process compromised by suspicion as to its probity offers at best only a hollow vindication and no one is satisfied.

Both scholarly research and contemporary media accounts indicate that unmet expectations of independence upsets complainants and damages the system's reputation,

The presence of an external agency can create a misleading expectation of independence, followed by disillusion when the agency's involvement in the process proves to be marginal.³⁰

The Parliamentary Crime and Misconduct Committee has reported that it *'frequently receives feedback from members of the community expressing concern that their complaints'* have not been investigated by the CMC but have been devolved back to the agency concerned.

The Committee recognises that these are validly held concerns and that devolution is an aspect of the Commission's misconduct function that has perhaps the greatest potential to erode public confidence in the independence and integrity of the Commission as an oversight agency. The Committee appreciates that complainants to the Commission will often have a very personal stake in the outcome of the misconduct investigation, especially where they feel personally aggrieved by the conduct complained of. Various complainants to the Committee have raised concerns about the Commission's devolution of

²⁹ Queensland Law Society submission to the Independent Review Panel, 1 April 2011, p. 5.

³⁰ Prenzler, T., *Police Corruption: Preventing Misconduct and Maintaining Integrity*, CRC Press, 2009, p. 158 (citing Landau's work in 1994 and 1996)

Also, for example in 'No fixed redress', by Leisa Scott in *QWeekend, The Courier-Mail*, 9 April 2011 p. 18 describing complainant Bruce Rowe (who took the 'rare option of a private criminal prosecution') as being incensed by the complaints system as he could not believe it when his letter seeking [CMC] help was replied with the line, *'We consider it is appropriate for the QPS to take responsibility for dealing with your concerns'*.

their complaint back to the agency complained of, including concerns that the matter will not be properly or independently investigated, that any evidence of misconduct found will be 'covered up', or that the seriousness of their concerns has not been fully appreciated by the Commission. The Committee acknowledges that even where there is no objective evidence that anything other than a full and thorough investigation was done by an agency, the perception of a biased process or outcome, or 'Caesar judging Caesar,' will often remain. It is that perception that can operate to erode public confidence in the CMC.³¹

The Parliamentary Crime and Misconduct Commissioner has recognised that *'strategies are needed ... to address problems associated with the public perception that a devolved investigation will not be carried out impartially'*.³²

The second aspect to the criticism of 'police investigating police' concerns the secondment of QPS officers into the CMC for the purpose of conducting the oversight body's investigations into police complaints. This resourcing has been described as marring the independence of the CJC/CMC, *'exposing the organisation to regulatory capture'* although the CMC on its 'own motion' can use non-police investigators.³³

Perhaps the greatest disappointment, however, lies with the CMC's failure to engage in genuinely independent investigations. Fitzgerald referred to a mix of seconded police and specialist civilian staff. But the CMC has consistently relied on a large posse of about 100 seconded police to conduct its investigations, with limited supervision by lawyers. In effect, the old system of police investigating police predominates, with the presumption - supported by limited evidence - that civilian oversight will solve the problem of apparent or real bias.³⁴

Research in the United Kingdom clarifies that independent *investigation*, as opposed to independent supervision, is the key to public confidence, and that independence throughout all levels of the system is essential.³⁵

Research conducted by the CMC in Queensland reports that 91.5% of public respondents favoured an independent body rather than police to conduct investigations. However, a further break down of the research results suggests the broader question is 'who investigates *which* complaints':

- Nearly 70% of public respondents believed that the QPS would best deal with a service complaint of an officer being rude to them.

³¹ Parliamentary Crime and Misconduct Committee (PCMC), *Report No. 79: Three Year Review of the Crime and Misconduct Commission*, 2009, pp. 29-30.

³² *ibid.*, p. 29.

³³ Prenzler, T., *Police Corruption: Preventing Misconduct and Maintaining Integrity*, CRC Press, 2009, p. 157.

³⁴ Prenzler, T., 'An Assessment of Reform in Politics, Criminal Justice and the police in Post-Fitzgerald Queensland', *Griffith Law Review*, 18(3), 2009, pp. 576-595, pp. 587-588.

³⁵ Harrison, J. and Cuneen, M., *An Independent Police Complaints Commission*, Liberty, UK, 2000, p. vii.

- Over half the public respondents considered that a complaint against police assault would be best dealt with by the QPS, rather than the CMC.
- More respondents considered that the QPS should deal with a complaint that an officer had taken a bribe (although the gap between the QPS and CMC as preferred agency narrowed since 2005 survey).³⁶

The CMC concluded that the survey results,

... suggest that, to some extent, the general public may not understand why complaints against police should be investigated by the QPS, yet at the same time they appear to recognise the value of having the QPS investigate some types of complaints.³⁷

Fitzgerald too accepted that not all complaints required an arm's length complex process. Subject to the Fitzgerald Report's other recommendations,

... disciplinary matters should be dealt with by commissioned officers in a simple, streamlined way. Complaints of a purely disciplinary nature should be dealt with at regional level by the Regional Commanders or their commissioned nominee.³⁸

The third aspect to criticisms of 'police investigating police', which is beyond our terms of reference, is where the CMC's responsibilities in respect of major and organised crime not only 'divides its focus' as an integrity commission, but it has '*an inherent conflict of interest in detecting wrongdoing by police because, increasingly, its core functions have become those of crime fighter*'³⁹ and it is that role requiring it to work closely with police that '*potentially compromises the commission's independence*'. Fitzgerald saw only a limited role for the integrity commission model in the area of criminal intelligence coordination, but that role has been '*significantly enlarged*'.⁴⁰

Where various stakeholders and commentators may agree that 'police investigating police' undermines public confidence in Queensland's police complaints system, they do not necessarily agree on solutions to a problem that bedevils the architecture and practice of police complaints systems all over the world.

Many stakeholders and commentators, such as the Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, accept that '*it is not in the public*

³⁶ CMC Report, pp. 54, 50, 51; Prenzler, T. and Faulkner N., 'Towards a Model Public Sector Integrity Commission', *Australian Journal of Public Administration*, vol. 69, no. 3, 2010, pp. 256.

³⁷ CMC, *Public Perceptions of the QPS Public Attitudes Survey*, 2009, pp. 60.

³⁸ Fitzgerald Report, p. 294.

³⁹ Kiem, S., Submission to Queensland Government Integrity and Accountability in Queensland Discussion Paper, 8 Sept 2009.

⁴⁰ Prenzler, T. and Faulkner N., 'Towards a Model Public Sector Integrity Commission', *The Australian Journal of Public Administration*, vol. 69, no. 3, 2010, p. 258. It is partly for this reason that NSW has a multiagency system.

interest' for an independent body external to the police to investigate every claim that a police officer's conduct is questionable.⁴¹

Those stakeholders who maintain support for devolution, such as the CMC, QPS, the Parliamentary Committee and the Parliamentary Crime and Misconduct Commissioner, contend that the policy was not implemented as intended by devolving to its lowest levels, or that it needs support with additional strategies to promote public confidence. Analysis of the rationale for the policy, its design and implementation will inform a conclusion as to whether the policy is flawed, or misapprehended in its execution, or both.

4.1.1 Devolution: the principle in practice

In 1999, 'Project Resolve' was established to trial the devolution of minor complaints from the then CJC to the QPS.⁴² This trial was regarded as successful and the then Parliamentary Criminal Justice Committee in 2001 recommended that the CJC continue with the gradual devolution of responsibility to the QPS. The new *Crime and Misconduct Act 2001* effected the devolution and capacity building focus and returned primary responsibility for police misconduct to the Commissioner of Police. Responsibility for dealing with 'official misconduct' remained with the new CMC, unless it was devolved to the Commissioner of Police under section 41.

Significantly, in considering police investigating police concerns, the CMC could *direct* the QPS to conduct further investigations in official misconduct matters notwithstanding their devolution, and the CMC could assume responsibility for and complete investigations in either police misconduct or official misconduct matters.⁴³

In 1998, breaches of discipline were dealt with by the QPS but the then CJC retained most of the alleged or suspected misconduct referring approximately 20 per cent to the QPS for investigation.⁴⁴ In the first year after devolution, the CMC retained 10 per cent of the matters referred to it, in 2009-10 the CMC retained 2 per cent of the complaints for investigation by itself.⁴⁵

The retention rate and the associated discretion involved has been criticised.

Another limitation follows from the enormous discretion granted to the CMC on how to proceed with matters. The commission generally complies with the principle of devolution set out in the Act in Section 34C. It investigates fewer than 2 per cent of the approximately 3,500

⁴¹ ATSILS submission, op cit., p. 8.

⁴² Lucas, P., Parliamentary Debates, Thursday, 24 August 2000.

⁴³ *Crime and Misconduct Act 2001*, ss. 47, 48.

⁴⁴ PCJC, Report No. 45, 1998, p. 47.

⁴⁵ Beattie, P., Parliamentary Debates, Wednesday 6 November 2002.

complaints it receives each year - despite a budget of \$37 million and a staff of 350.⁴⁶

And,

This new approach [under the *Crime and Misconduct Act 2001*], coupled with the CMC's recent foreshadowing of other changes to the processing of complaints, takes the CMC in a different direction to that recommended by Fitzgerald. There are risks associated with this change as it has the potential to weaken the CMC's reputation as an effective citizen's watchdog body.⁴⁷

In 2009-10, the CMC conducted 125 reviews (being 5 per cent of the matters referred to the QPS) and was concerned with 12 per cent of those reviewed, including for quality of investigation or report, and for timeliness.⁴⁸

Before the *Crime and Misconduct Act 2001* expanded the monitoring capacity and role for the CMC, the then CJC did not conduct audits of particular classes of matters and had a narrow monitoring focus based on individual review officer conclusions. In contrast, the CMC describes a more objective and system-based review and audit methodology in serving its oversight role under the new legislation.

The CMC's ongoing support for devolution has been submitted to its oversight parliamentary committee in these terms:

The Commission remains strongly convinced that responsibility for continuously improving the integrity of the Queensland public sector, and reducing the incidence of misconduct within it, must not rest solely with monitoring bodies such as the CMC. This responsibility must be part of the core business of the public sector agencies themselves, including the QPS. The biggest challenge for the CMC is to embed that notion in the public sector.

A strong culture of integrity requires that public sector managers accept responsibility for integrity within their domain, but are supported in that responsibility. Managers who are secure in the knowledge that they have the support of senior management and the bodies that oversee them are better placed to play this vital role in a way that will survive the normal turnover of management.⁴⁹ (2006 three-year review)

⁴⁶ Prenzler, T., 'An Assessment of Reform in Politics, Criminal Justice and the police in Post-Fitzgerald Queensland', *Griffith Law Review*, 18(3), 2009, pp. 576-595, pp. 583.

⁴⁷ Lewis, C., 'Crime and Misconduct Commission: Moving Away from Fitzgerald', *The Fitzgerald Legacy: Reforming Public Life in Australia and Beyond*, Lewis, C., Ransley, J., Homel, R., Australian Academic Press, 2010, pp. 57-81, p. 58.

⁴⁸ CMC Report, p.26.

⁴⁹ PCMC, *Report No. 71: Three Year Review of the Crime and Misconduct Commission*, 2006, pp. 42-43.

The Commission continues to hold the firm view that a strong culture of integrity requires public sector managers to accept responsibility for the culture and behaviour of their workplace and for reducing the risk of misconduct.⁵⁰ (2009 three-year review)

Section 34 of the *Crime and Misconduct Act 2001* expressly states Parliament's intention that the CMC apply four principles when performing its misconduct functions, namely: cooperation, capacity building, devolution, and the public interest.

The devolution principle that '*action to prevent and deal with misconduct*' should generally happen within the QPS (as the unit of public administration) is '*subject to*' the cooperation and public interest principles, and a consideration of the capacity (of QPS) to prevent and deal with its misconduct. That is, it is Parliament's express intention that (even if the QPS has capacity) the QPS should only deal with official misconduct if both the cooperation and public interest principles have been satisfied.

The cooperation principle requires that the CMC and the QPS 'work cooperatively' to deal with misconduct.⁵¹ This Review has been presented with a pattern of examples where although matters have been devolved to the QPS, cooperation by either or both parties has been difficult to achieve. The casualties are timeliness and public confidence in the police complaints system. One officer within the agencies concerned called for '*a moratorium between the CMC and the QPS*' so that both can get on and do their jobs. It is important to note, however, that this state of affairs has not always been so in relation to all matters between the two agencies. But when it is to this extent, the cooperation principle has not been met and devolution is compromised.

The public interest principle gives the CMC '*an overriding responsibility to promote public confidence*' in the integrity of QPS and, if misconduct does happen by police, the CMC has an overriding responsibility to *promote public confidence* in the way it is dealt with. In making an assessment whether the CMC or the QPS should deal with any particular case of misconduct, the CMC should have primary regard to-

- the resources and capacity of the QPS to deal with the misconduct;
- the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within the QPS; and
- any likely increase in public confidence in having the misconduct dealt with by the CMC directly.⁵²

It is on this measure that a range of stakeholders and commentators in the media contest that the application of the public interest by the CMC in deciding whether to refer a complaint to the QPS is not clear, and that public

⁵⁰ PCMC, *Report No. 79: Three Year Review of the Crime and Misconduct Commission*, 2009, p. 29.

⁵¹ *Crime and Misconduct Act 2001*, s. 34(a).

⁵² *Crime and Misconduct Act 2001*, s. 34 (d).

interest is not given sufficient weight or priority in checking the principle of devolution.

Criticisms of transparency and accountability arise. Transparency, because stakeholders claim they cannot discern the criteria used by the CMC in determining where the public interest lies in a particular case. Accountability, because it is contended that the implementation of devolution for police does not adequately take into account the peculiar organisational history of police and their strong collegiate culture and thus the higher standard of accountability expected by the public in reviewing their conduct in the exercise of their special powers and responsibilities. These criticisms of the public interest principle in practice form part of the 'police investigating police' debate.

There has been significant criticism of the QPS in respect of both the initial and subsequent internal review investigations into the death in custody of Mulrunji on Palm Island in 2004. The CMC review of the QPS *Palm Island Review* found both investigations,

... seriously flawed and recommended that the QPS consider disciplinary action against the police officers involved.

The review also identified problematic aspects of police culture and reinforced the need for thoroughness and impartiality by police, particularly when investigating their own officers.⁵³

According to local media and stakeholders, public confidence in the CMC has also suffered in significant terms following the events in Palm Island in 2004. Critics claim that instead of taking 20 months to review the police report, to then send the matter back to the QPS to review again, the CMC ought to have taken over the investigation into the death from the QPS and charged the officers with official misconduct.⁵⁴ This criticism relies on the public interest principle under section 34 acting as a gatekeeper for public confidence *before* a decision is taken for police to investigate police. The criticism also relates concerns in the (public) deterioration in the working relationship between the CMC and the QPS.

The Palm Island case puts in sharp focus the triangulation of devolution, public interest and cooperation principles and how public confidence is compromised if the principles do not shape up in support of that '*overriding*' priority.

In 2009, the Parliamentary Crime and Misconduct Committee suggested amendments to improve implementation of devolution,

... section 34(d) of the *Crime and Misconduct Act 2001* be strengthened to require greater consideration of the public interest in

⁵³ CMC, Annual Report 2009-10, p. 27.

⁵⁴ For example, *The Courier-Mail*, 'Mulrunji saga has agencies at prickly impasse' (Editorial), 15 March 2011.

devolution decisions, particularly where the complaint relates to the culture of a unit of public administration or where the nature of the complaint is such that devolution is unlikely to remove public perceptions about a lack of impartiality.⁵⁵

The Government in its response to Parliament considered that the existing legislation was already clear that devolution was subject to the public interest.

The Review understands that substantiation rates for complaints against police prior to the 2001 amendments for devolution compared with those a decade later *post* devolution are approximately the same substantiation rate for complaints under both approaches. (Although the proportion of investigated complaints that were substantiated had risen from approximately 14 per cent per year pre-Fitzgerald to an average of 27 per cent per year in the four years after the full establishment of the new CJC and police complaints systems.)⁵⁶

Timeliness in complaint resolution before and after devolution similarly indicates no effective change.

Devolution was intended to reduce the CMC's investigative load and therefore reduce timeframes for investigations,

One aim of requiring police to investigate police misconduct in the first instance is to improve the efficiency and timeliness of all investigations by freeing up commission resources to focus on oversight and more significant investigations. (second reading speech)

That objective was only partly met. The investigative caseload for the CMC has reduced significantly, and its monitoring activity has increased. However, excessive timeframes for resolution of matters continue to undermine achievement of an efficient, effective and economic system in which stakeholders and the wider community can have confidence.

In addition to concerns as to the priority of the public interest principle under section 34, the second significant area of concern for devolution is the extent to which police complaints are referred down by the chains of command within the QPS to the regions and down to the local levels even, as the Review has learned, down to the same station for investigation. This is where police who know each other, and may work together, investigate the other. This scenario presents an inherent conflict for objective impartial investigations, and outcomes.

⁵⁵ PCMC, *Report No. 79: Three Year Review of the Crime and Misconduct Commission*, 2009, p. 30. (Hereinafter referred to as PCMC Report 79).

⁵⁶, Prenzler, T., 'An Assessment of Reform in Politics, Criminal Justice and the police in Post-Fitzgerald Queensland', *Griffith Law Review*, 18(3), 2009, pp. 586-587.

The CMC has described devolution as,

a process whereby agencies require their local managers to take responsibility for dealing with complaints of official misconduct rather than see it as a senior management problem. If supervisors are made responsible for the behaviour of those working directly for them, then they are less likely to turn a blind eye to misconduct and more likely to ensure systems are in place to foster integrity. Only then can a culture of integrity successfully be embedded in an organisation.⁵⁷

This Review agrees with the objective to ensure that ethical conduct is part of core business but considers that there are three key distinctions that should be made in relation to the devolution approach to supervisors for official misconduct complaints.

First, being responsible for a subordinate's conduct does not require as a matter of fact or process that the supervisor be the one who investigates it. There is a difference between a supervisor's accountability for a team member's official misconduct in a managerial sense and responsibility for investigating the complaint. A supervisor can, and should, be responsible for managing the consequences of that behaviour and being accountable for learning and improved performance outcomes without a precondition on personally investigating, or supervising the investigation of, the merits of the claim at the outset.

Second, the public interest requires that the policy is not a one-size fits all approach. Different agencies have different profiles and circumstances. The concern for an arm's-length investigation of official misconduct is more acute for a police organisational culture and co-dependent work circumstances. Investigations require the application of skill, effort and judgment. The quality of that application should not be influenced by personal or professional interests that must inevitably arise if the investigator is from the same work team in a policing environment. This caution is not to make police culture an excuse for the organisation taking on more responsibility, it is simply a reality of the norming that occurs on the job where dangerous jobs feel safer when workmates can be relied on.

There is now an extensive critique of internal affairs units that stresses the apparent pathological inability of police to objectively investigate their peers.

...Although the idea of a police culture is often exaggerated in its alleged uniqueness from other organisations, a typical traditional police organisation will feature an extremely high level of group loyalty that makes it anathema for police to testify against other police.⁵⁸

⁵⁷ CMC, Annual Report 2008-09, p. 5.

⁵⁸ Prenzler, T. and Ronken, C., 'Models of Police Oversight: A Critique', *Policing and Society*, Vol.11, 2001, pp. 151-180, pp. 157-158, (references omitted).
Lewis, C., *Complaints Against Police: The Politics of Reform*, Hawkins Press, 1999, p. 23.

Third, there is a difference between investigating lesser conduct breaches (e.g. acts of incivility or poor service behaviours, or the less serious breaches of discipline) and by contrast the more serious official misconduct matters. The latter involving more risks.

In 2009, the Parliamentary Committee suggested that there be,

- adequate distance between subject officers and those investigating and adjudicating on any complaint, to avoid the reality or the perception of a lack of impartiality or independence; and
- where appropriate (particularly in cases where such distance cannot be provided or in cases of allegations of serious misconduct) oversight, review, or full investigation by the CMC itself occurs.⁵⁹

A number of consultations during the course of this present Review suggested that devolution to the local levels occurred to an extent that was not intended by the legislation.

Some were of the view that the current policy arrangements should be maintained but adhered to more closely in ensuring better delegation decisions in respect of investigating officers at the local level. Others contended that the levels of various decision-makers be higher in the chain of command to be more senior (i.e. more skilled, more responsible, and more independent) and include a greater role for the Ethical Standards Command.

Others favoured a centralised role within the QPS for those more serious matters devolved from the CMC to the QPS. Benefits advanced in favour of the centralised role within the QPS included more timely, consistent and independent outcomes. Those who opposed centralising the role (of investigations and decisions) cautioned against setting up 'a police court', or 'mini CMCs' within the Service and undoing the efforts made to date to inculcate ethical conduct as part of core business, and a local responsibility.

Review of the feedback from the 37 focus groups involving 538 participants across the Service in 2010 shows further support for a centralised model within the QPS and highlights this primary operational concern for many police: *investigating officers have to balance complex investigations in addition to their existing operational workloads which causes timeframes to blow out*. Individual officers in focus groups felt unsupported by the weight of operational demands together with responsibility for (potentially complex) complaint investigation(s) expressing concern that,

investigating officers were usually given little if any support by Ethical Standards Command, when conducting such investigations whilst

⁵⁹ PCMC 79, p. 30.

having to balance their current existing workload along with their supplementary investigation commitments.⁶⁰

One Sergeant said,

We should have learnt our lessons from [the Palm Island experience] about police investigating police and allegations of bias, but we haven't. By continually allowing police who have close relationships with each other to investigate each other does nothing for maintaining professionalism and will no doubt be heavily scrutinised down the track if files are not investigated to the satisfaction of [others in the system].⁶¹

4.1.2 Evolution with devolution

The policy and practice of devolution in Queensland has evolved gradually over the last twenty years, although the current legislative framework was introduced ten years ago.

Before Project Resolve, there was a pilot mediation program in 1992 for minor complaints between the CJC and the Department of Justice and Attorney-General. This led to the introduction of an informal resolution program in the QPS in 1993, which aimed to achieve satisfactory outcomes for the complainant and the subject police officer, rather than determining a disciplinary or criminal offence.

The *Report on the Review of the Queensland Police Service* led by Sir Max Bingham QC in 1996 supported the widening of informal resolution, and monitoring by the Ethical Standards Command, QPS.

In 1998, the then Parliamentary Criminal Justice Committee considered that the '*long-term objective*' should be for the QPS to conduct '*all investigations of matters involving potential misconduct, but which fall short of official misconduct*'.⁶² In the interim, the Parliamentary Criminal Justice Committee recommended a review of the guidelines for referral of matters to the QPS to ensure that they adequately reflect the capacity of the QPS to properly investigate complaints against police officers. The Committee was concerned at the sustained *decrease* in the proportion of minor misconduct matters referred to the QPS since 1993-04.

Further, in relation to the power of review, the Parliamentary Committee favoured an oversight goal of audits instead of reviews.

Although the Committee recognises that review of individual complaints referred to the Commission is necessary at this time, the Committee considers that in the long term review of all complaints should cease to

⁶⁰ Focus Group Report, p. 9.

⁶¹ Focus Group Report, p. 10.

⁶² PCJC, Report No. 45, 1998, p. 48.

be necessary. At that time options such as random audits should be considered.⁶³

By 2000, Project Resolve had succeeded the informal resolution program. Both programs aimed to provide a timely and effective alternative for less serious matters to the panoply involved with full investigation of complaints. Managerial resolution under Project Resolve was more broadly available to matters, and enabled remedial intervention and fewer investigations by the CJC, subject to monitoring.

Project Resolve was seen to achieve successes in timeliness and in managerial processes that encouraged supervisors and officers to take more responsibility for their actions. The Parliamentary Criminal Justice Committee supported the direction towards devolution, and the Parliament enacted the principle in section 34 of the *Crime and Misconduct Act 2001*.

Project Verity was initiated in 2003-04 with the aim of undertaking an integrity scan of the QPS including:

- a review of the QPS handling of complaints;
- development of a devolution strategy;
- discipline and sanctions review/improvement projects;
- review of Chapter 18 HRMM (Complaints);
- enhancement of a state-wide complaints management system.⁶⁴

Project Verity was trialled in two adopter regions, Metropolitan North Region and North Coast Region between 2007 and 2009. '*Considerable resources were invested*'⁶⁵ in rewriting Chapter 18 of the Human Resource Management Manual for a new Service-wide Policy and there was extensive consultation over an extended period of time between the QPS and the CMC to try and settle the frame and terms of the new policy.

From a range of actors in that policy development process, this Review is informed that agreement could not be reached and relations soured significantly between the QPS and the CMC in the drawn out process. Accordingly, despite tangible successes in some aspects of the policy such as the improvement in timeframes afforded by the Administrative Consensual Discipline Process (ACDP) in the trials, the inability to agree on the Service-wide Policy has impacted adversely on the Project's credibility. The Queensland Police Union of Employees submitted,

... Project Verity has not been a success, although we can certainly point to isolated instance of matters that have been satisfactorily resolved via this process. Overall though, it has been executed in an

⁶³ *ibid.*

⁶⁴ QPS Submission to Queensland Government Integrity and Accountability in Queensland Discussion Paper, September 2009, p. 18.

⁶⁵ *ibid.*, p. 20.

inconsistent and piecemeal fashion, and has not won the confidence of the membership.⁶⁶

Resolution of the difficulties and finalisation of a policy has now been held pending the outcomes of this Review. Meanwhile the QPS has two complaints systems operating to the extent that the two Verity adopter regions continue under the Verity model which is different to that which applies to the rest of the Service.

More evolution?

The original rationale for devolution in favour of the opportunity for remedial intervention, restorative justice, and learning outcomes was directed at the minor and less serious matters only.

Devolution has evolved though to include official misconduct and serious (Category A) police misconduct.

Notwithstanding the additional risks to the public interest and to public confidence, and that the genuine opportunity for remedial influence is likely to have passed, the same rationale that managers should take responsibility for their core business is now applied to the more serious matters within the scope of devolution. This concerns the complainant, the subject officer and the public who fear that independence would be more critical in this scenario than managerial involvement.

The other concern is the extent to which devolution in more serious matters responds to the oversight body's organisational capacity to deal with critical incidents which is a structural or resourcing concern (not covered by section 34 of the Act) and deserves a separate debate. It should not be confused with the philosophical underpinnings for a devolution program.

The CMC recently called for additional legislative power to refer police misconduct matters to the QCAT, in addition to its current jurisdiction in respect of official misconduct.⁶⁷ The CMC's *Setting the Standards* Report also recommends legislative amendment to enable the CMC to require the Commissioner of Police to report and investigate as directed in relation to police misconduct matters.⁶⁸

However, after a decade of devolution experience under the *Crime and Misconduct Act 2001*, the current call for more, not less, legislative oversight power needs careful analysis given that the Parliamentary Committee's intention some 13 years ago was to start with additional monitoring powers for police misconduct as a first step moving later to a full devolution as capacity builds.

⁶⁶ Queensland Police Union of Employees, Submission to the Independent Review Panel, April 2011, p. 11.

⁶⁷ CMC Media Releases, 'QPS takes no disciplinary action against Palm Island officers'; 'Clarification of CMC power to seek review before QCAT', 15 March 2011.

⁶⁸ CMC Report, recommendation 4, p. 66.

Is the call for more not less monitoring powers because the original design was too broad and matters that are too serious are caught up in the devolution program?

Is it because devolution can not be justified on the managerial core business grounds and there are doubts as to its efficacy compared with the police investigating police concerns?

Is it because the public interest principle under the Act has not been accorded its due weight as a precondition to devolution?

Or, is it because the original framework expected that capacity in the organisation would build and sustain a confidence that the risks of devolution were low - and that has not happened? Was the expectation for capacity building unrealistic?

Are there other factors that might explain the policy's controversy in practice?

A balance needs to be struck between the learning benefits of devolving complaints back to the organisation and the public interest in external independence safeguarding police integrity. Greater discernment is also required to unlock the current stalemate involved with Project Verity, and to chart a course for the ongoing powers and practice of devolution.

Chapter 5 (pp. 52-102) makes recommendations for next steps in the devolution experience for Queensland that best respond to the analysis and concerns raised in this chapter regarding public confidence and the devolution experience, and is informed by a consideration of alternative interjurisdictional features.

4.1.3 Alternative Models

A review of the literature and interjurisdictional models indicates a managerial orthodoxy that focuses on 'who is guarding the guardians', and models are typically measured according to the extent of their lay element (i.e. the nature and extent of their civilian supervision) with a shift away from internal police control of discipline in all Australian jurisdictions. Contemporary developments also include a preference for a management/remedial model rather than the punitive system.

Variables across alternative police oversight systems include whether they are-

- internal or external;
- investigatory or review;
- advisory or adjudicative;
- complaints driven (process-focus) or proactive intelligence based (outcomes-focus);
- adversarial or inquisitorial; and

- inhouse or civilian,
or both in various combinations.

Some systems are single or multi-agency. Agencies might have a narrow mandate or multiple functions. Their differences across jurisdictions relate to local histories, reasons of economies of scale or priority for specialist application, and the relevant capacities and standing of generalist oversight agencies in the broader integrity framework.

All Australian jurisdictions involve a devolution component providing an informal managerial process as well as formal investigations. The CMC has been described as having '*most of the powers and resources consistent with a best-practice model of police integrity management*'.⁶⁹ The Queensland integrity system is also distinguished by its dedicated function for research and prevention. However, it is evident from a review of the literature that where once the Queensland system was cited as a model of leading practice, including in international literature and research publications, it has not received the same attention or positive review since the introduction of the devolution policy in the *Crime and Misconduct Act 2001*.

A number of developments in the Australian jurisdictions now post-date the CJC, and CMC and are different in a number of features.

Professor Tim Prenzler who has written extensively and comparatively on police integrity systems over an extended period is critical of the CMC's reliance on seconded police in particular and the devolution of complaints management generally.

There are now much more advanced models of successful integrity agencies in other jurisdictions. The New South Wales Police Integrity Commission and the Northern Ireland Police Ombudsman, for example, are notable for minimising police involvement in investigations of police. The Northern Ireland Ombudsman also deals with all complaints itself. Policy has also moved forward in other jurisdictions in specifying police-to-civilian ratios in order to ensure civilian dominance, including a civilian presence on police disciplinary panels and specifying which matters must be dealt with by the independent agency to ensure stakeholder confidence in the impartiality of investigations and discipline.⁷⁰

England and Wales (2004) - similar single agency model

The Independent Police Complaints Commission (IPCC) for England and Wales established by the *Police Reform Act 2002* is a non-departmental government body consisting of a chair and commissioners who form its governing body and set its policy. The IPCC's role is to ensure efficient and

⁶⁹ Prenzler, T., 'An Assessment of Reform in Politics, Criminal Justice and the police in Post-Fitzgerald Queensland', *Griffith Law Review*, 18(3), 2009, pp. 576-595, p. 586.

⁷⁰ *ibid.*, pp. 592-593.

effective handling of complaints and 'contain and manifest an appropriate degree of independence', and to establish and maintain public confidence in the system. Its remit is to investigate complaints and conduct matters for police and police civilian staff.⁷¹

The IPCC has four procedures available to it for dealing with complaints: investigation by the police; investigation by the police supervised by the IPCC; investigation by the police managed by the IPCC; and investigation by the IPCC. The first two procedures are no different from those previously operated by the Police Complaints Authority. "Managed" investigations, a new procedure, is similar to supervised investigations, but with more direct control by the IPCC involving day-to-day direction and control of the officers appointed to investigate. 'Independent' investigation is the other new process. Unlike the Police Complaints Authority, the IPCC will be able to employ its own investigators in order to conduct independent investigation of complaints. These investigators will have the same powers of seizure and questioning as the police in order to conduct the investigation.⁷²

The police have a duty to comply with IPCC recommendations and directions, which include directions to bring disciplinary charges. Informal 'local resolution' can be used with complainant's written consent.

This model is arguably similar in many respects to the CMC, but has been criticised as a compromise model because of the Government view that it would not be 'practicable or cost effective' for the IPCC to investigate all complaints. Commentators argue that reason is not evidence-based.⁷³

New South Wales (1996) - less police investigating police, multi-agency model

In New South Wales, the Ombudsman's Office is the primary body for police oversight (of Category 2 matters) with the NSW Police investigating the majority of complaints. The Police Integrity Commission (PIC) that was established following the Wood Royal Commission has an investigative focus targeted at serious police misconduct and police corruption (Category 1 matters). In practice, the PIC investigates or oversees only a small number of the category 1 complaints (25 in 2004-05).⁷⁴

Like Queensland, the NSW model is characterised by both internal and external investigation, although within the NSW Police there are 'Complaint

⁷¹ Seneviratne, M., 'Policing the Police in the United Kingdom', *Policing and Society*, 14:4, 2004, pp. 329-347, pp. 335-336;

Punch, M., *Police Corruption: Deviance, accountability and reform in policing*, Willan Publishing, 2009, p. 211.

⁷² Seneviratne (2004), op. cit., p. 335.

⁷³ Seneviratne (2004) op. cit., p.338;

Prenzler, T. and Ronken, C., 'Models of Police Oversight: A Critique', *Policing and Society*, Vol.11, 2001, pp. 151-180, pp. 157-158, p. 169.

⁷⁴ Parliament of New South Wales, *Ten Year Review of Police Oversight in New South Wales*, 2006, p. 68.

Management Teams' at local area command level. Ten years after the Wood Royal Commission, the PIC considered that the handling of complaints had '*improved considerably*' and the '*local area command system works well with complaint management teams*' although the success of this system depended very much on the commitment of the local area commander and delegates.⁷⁵ Some caution was evident in the ten year review that the local area command should be encouraged to informally resolve minor complaints at local command level without the involvement of Complaint Management Teams.

In contrast to Queensland's system, NSW takes a multi-agency approach for police oversight (PIC and the Ombudsman, the Independent Commission Against Corruption deals with public sector misconduct only) and does not permit current or former NSW Police officers to work for the PIC⁷⁶ which quells criticism of police investigating police in respect of at least the Category 1 complaints it investigates directly. Also, the Ombudsman model is staffed by civilian investigators. As such in respect of the devolved Category 1 complaints and Category 2 complaints, its oversight role is credited by external, civilian review.

Northern Ireland (2000)- no police investigating police, single agency model

The 'powerful' Police Ombudsman for Northern Ireland (PONI) followed the Patten Inquiry into policing in Northern Ireland in 1999 which also endorsed earlier recommendations from the 1997 Hayes Report. The PONI has the power to investigate all complaints against police ranging from allegations of police incivility to serious criminal offences (except matters to do with the direction and control of the police are beyond its remit).⁷⁷ Only minor matters can be resolved informally with the complainant's consent and these are referred to police although the PONI reviews the outcomes. The PONI may also seek mediation of a complaint, and it has responsibility for statistical trend analysis and for making recommendations for improvement of practices. The PONI can make recommendations about disciplinary matters and has the power to direct that disciplinary proceedings be brought

The PONI was established in a particular policing and peace context in Northern Ireland however it is regarded as a leading model of civilian control that is independent and seen to be independent.

It appears that the PONI has been given enough resources to enable it to carry out its investigations effectively, with a budget in excess of £6 million a year, representing about 1 per cent of the policing budget.⁷⁸

The 'civilian control model'⁷⁹ like that in Northern Ireland conducts genuinely independent investigations and adjudication of complaints. The 'civilian review model' independently audits internal investigations and disciplinary

⁷⁵ *ibid.*

⁷⁶ *Police Integrity Commission Act 1996*, (NSW), s. 10(5).

⁷⁷ Northern Ireland has a population of 1.5 million approx. and an armed police force of around 13,000, Senevriatne (2004), *op. cit.* p.339; Punch (2009), *op. cit.*

⁷⁸ Senevriatne (2004), *op. cit.* p. 341.

⁷⁹ Internal, civilian control and civilian review - see Prenzler and Ronken (2001), *op. cit.*

decisions in its monitoring role, but police normally conduct the investigations and determine the disciplinary actions. In the practice of devolution in Queensland, the CMC acts as a civilian review model, which is described as the 'compromise model'.⁸⁰ However, it is argued,

The civilian control model need not weaken police responsibility for maintaining discipline, as police managers could still exercise their role in internal disciplinary matters, and the police could also have prime responsibility for the mediation of complaints. Nor ... is it only police officers who have the necessary competence in investigation skills and the capacity to penetrate the police world. Investigation is a generic skill that can be taught and developed in diverse contexts and penetration of the police world can be achieved by structural reform, including whistleblower protection legislation, mandatory reporting of misconduct and surveillance technology.⁸¹

Steering Committee guidance of the Review Panel for this present examination of Queensland's model has sought an evolutionary approach. As such, it is beyond this Review's scope to make a business case advancing significant structural and policy change in the framework governing Queensland's oversight body. However, the Review Panel makes the following observations-

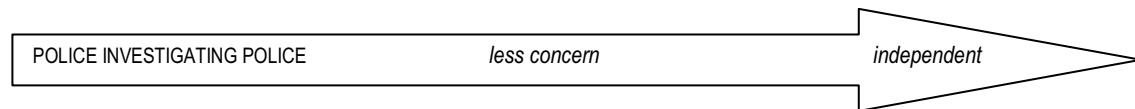
- public confidence in the Queensland police complaints system suffers from concerns of a lack of independence in dealing with complaints when the system requires police (on secondment to the CMC or in the QPS) to investigate police;
- other models from other jurisdictions such as the NSW Police Integrity Commission and the Police Ombudsman for Northern Ireland more effectively limit or exclude police investigating police concerns; and
- the CMC model as a civilian oversight body in the police complaints system, as presently constituted and practised in implementing the devolution policy introduced by the *Crime and Misconduct Act 2001*, would be improved on public confidence measures if it adopted at least some of the features of interjurisdictional models designed to increase external civilian independent control over the police complaints system regarding-
 - secondment of QPS officers to the CMC; and
 - a new adjudication power over disciplinary matters (see chapter 5, pp. 59-66).

⁸⁰ Prenzler and Ronken (2001), op. cit., p. 166.

⁸¹ Seneviratne (2004), op. cit., p. 333, using Prenzler and Ronken (2001) (references omitted above)

Secondment of QPS officers to the CMC

There are three options that would improve the current situation where police seconded from the QPS currently undertake the CMC investigations under supervision of a civilian lawyer:



Option 1	Option 2	Option 3
Civilian pairing - QPS secondee is paired with a civilian investigator	No current or former QPS police officers (with specified exceptions)	Only civilian investigators

As a minimum, the Panel recommends (see section 4.2, Recommendation 3(b), pp. 42, 49) that there should be regular rotation of QPS secondees in the Misconduct section of the CMC.

The civilian pairing option could be a transitional arrangement, pending the training and recruitment of civilian investigators under an Option 3 model. Option 1 could also support transitioning arrangements and lead time in selection and recruitment for an Option 2 model. However, the Panel recommends Option 2.

The limitation under Option 2 does not impact on the use of seconded QPS personnel in the CMC's crimefighting or criminal investigation role where police may be under investigation and where misconduct charges could ultimately be laid.

Option 2⁸² anticipates seconded or former police of other jurisdictions serving in the CMC assessment and investigative capacity in the dedicated misconduct function of the CMC. It has the advantage of investigators understanding police culture, training and risks, without being part of that local culture or influenced by being a member of that organisation.

The primary notional antinomy that must be confronted is that 'police cannot investigate police' but, at the same time, 'only police can investigate police'.⁸³

Civilian pairing could also occur under the Option 2 model, and should occur when the public interest so requires. Currently though a 'significant'⁸⁴ number of civilian investigators are former QPS officers. This Review does not seek to limit the engagement of QPS officers in roles that are not tasked or involved with managing complaints against police. Those officers may be separately tasked with non-police related complaints and investigations should the business needs of the CMC so require.

⁸² *Police Integrity Commission Act 1996 (NSW)*, s. 10.

⁸³ Smith, G., 'Rethinking Police Complaints', *Brit. J. Criminol.* (2004) 44, pp. 15-33, p. 18 citing Preznler and Ronken (2001), op. cit., p.176.

⁸⁴ QPS, 6 May 2011.

Whilst this Review appreciates the skill sets and resourcing advantages available to the CMC in recruiting former QPS officers to civilian investigator roles, this recommendation is concerned with promoting public confidence by assuring arm's length assessments and investigations of police. It does not question the integrity of seconded or former QPS officers, it responds to the public perception of police investigating police. This perception is still relevant to *former* police from the same organisation from which the subject officer under investigation belongs, and it is not an unreasonable perception and concern for independence in the context of the CMC conducting investigations into only the most serious (2%) of cases in any event.

It is noted though that the reality of a team-based approach in moving resources to respond to peak load demands - in the context of approximately 60%⁸⁵ of matters concerning police - may present challenges for management in maintaining an arm's length for former QPS civilian investigators in police matters if the proportion of former QPS officers is too high in the staffing complement.

Option 2 (paired with non-police civilian investigators as may be determined in the public interest) is directed at ensuring that in that top 2% of the most serious cases that the CMC investigates, public confidence in the independent dealing with those complaints is not tested by the involvement of current or former officers from that same police organisation.

The limitation on QPS officers under Option 2 should not affect the inclusion of QPS officers in joint taskforces, joint investigations or any other collaboration with the CMC as a representative of the QPS, or on specific secondment for case-specific purposes where the technical skills sets or capacities of the QPS are required, such as for physical and electronic surveillance, forensic services, advice on current police operational processes and assistance with specific training.⁸⁶ Those specific engagements may be managed by a senior QPS officer seconded to the CMC on an as needs basis for the specific and limited purpose of liaison between the CMC and the QPS in those respects. The CMC would retain control or management of the investigation in those skills-specific circumstances and the QPS officers may be given only need-to-know information about the investigation to limit QPS involvement to the specific technical tasking.

This prospective collaboration in resourcing should be supported by the ready availability of an agreed framework such as a memorandum of understanding between the CMC and the QPS (see Recommendation 56, p. 126, for that purpose).

Due consideration has been given to machinery matters involved in this preferred option 2, such as for police powers, and the need to involve the QPS in investigations in a joint capacity in operations as and when risk

⁸⁵ CMC, 6 May 2011.

⁸⁶ Examples of these skills-specific circumstances were provided by the CMC and the QPS.

assessments in taskings so require. Other Australian police oversight agencies have adopted similar models in their staffing complement which may be considered in designing a Queensland solution. The intention of Option 2 is directed at just that 'core' staffing component tasked in everyday management of police misconduct complaints. Option 2 is not intended to exclude QPS from police misconduct investigations or other CMC engagement as and when risk assessments, operational need, and the public interest may so require.

Transition arrangements would be required to support implementation of this recommendation, including in managing a suitable change process as it concerns existing officers at the CMC who are current or former QPS officers. (see p. 42.) The CMC would need a specific change management plan to account for and manage the consequential requirements of a different misconduct staffing model that includes consideration of specific legislative provision for police powers for those non-QPS CMC investigators who are current or former police officers from other jurisdictions; competency assessment and training in best practice specialised investigative and skills training requirements; protocols for joint investigations with the QPS; and monitoring and evaluation.

RECOMMENDATION 1:

It is recommended that-

- a) a new staffing model be developed for the CMC's misconduct function of dealing with police complaints to improve public confidence in the structural independence of external oversight of police complaints and minimise police investigating police concerns; and
- b) the *Crime and Misconduct Act 2001* be amended to provide that for the misconduct function in the CMC insofar as it deals with complaints and allegations of misconduct against officers of the QPS-
 - i) current or former Queensland Police Service Officers cannot be appointed, employed, or otherwise engaged to the service of the CMC;
 - ii) the CMC may arrange for the secondment or engagement of a member of the Australian Federal Police; another State or Territory police service; or the police service of another country, as may be prescribed by regulation. Former police who have served at least 5 years in a meritorious capacity in those jurisdictions may also be engaged in the CMC;
 - iii) tenure should be limited to maximum of five years; and
 - iv) secondment of QPS officers for joint QPS/CMC investigations, or for case-specific tasking that requires QPS technical skills or capacities (e.g. forensic services, training) may be approved through an inter-agency memorandum of understanding.

4.2 Roles, responsibilities and relationships

*Responsibility for ensuring the Service conducts its affairs in an ethical, accountable and professional manner is vested with all members of the Service.*⁸⁷

A police complaints system that expects public confidence needs clear roles and responsibilities performed efficiently, effectively and economically. The Commissioner of Police and the Chairperson of the CMC have clear responsibilities for the performance of the respective roles of their agencies in the police integrity system.

QPS

Under section 4.8 of the *Police Service Administration Act 1990*, the Commissioner of Police is responsible for the efficient and proper administration, management and functioning of the police service in accordance with law, which includes the discipline of members of the service,⁸⁸ as well as a range of other specified responsibilities that directly support the integrity and ethical health of the organisation.⁸⁹

Under the *Crime and Misconduct Act 2001*, the Commissioner has primary responsibility for dealing with complaints, or reasonable suspicions, involving police misconduct.⁹⁰ The Commissioner is also responsible for dealing with official misconduct on referral from the CMC.⁹¹ Under section 42(1), the Commissioner must '*expeditiously*' deal with complaints. Subject to CMC directions under section 40, the Commissioner has a duty to notify the CMC of a reasonable suspicion of police misconduct and when there is a suspicion of misconduct.

The Deputy Commissioner (Specialist Operations) is responsible for the Ethical Standards Command led by an Assistant Commissioner which is tasked,

... solely to managing the internal complaint system; developing and maintaining ethical and professional standards/polices; promoting ethical behaviour, discipline and professional practices; and educating staff members regarding their ethical and professional obligations. The ESC is supported by a strong partnership with the CMC and a network of internal Professional Practice Managers across each of the Regions/Commands.⁹²

⁸⁷ QPS <http://www.police.qld.gov.au/aboutUs/the_service/structure/esc/> as at 13 April, 2011.

⁸⁸ *Police Service Administration Act 1990*, ss.4.8(1), 4.8(2)(l).

⁸⁹ *Police Service Administration Act 1990*, ss.4.8(2)(a), (b), (d), (e), (f), (k), (m), (n), (p), (q), (s).

⁹⁰ *Crime and Misconduct Act 2001*, s. 41(1).

⁹¹ *Crime and Misconduct Act 2001*, 41(2).

⁹² QPS Submission to *Integrity and Accountability in Queensland Discussion Paper*, September 2009, p. 11.

A range of delegated authorities are held under the relevant legislation. The Deputy Commissioners hold a general delegation for the Commissioner's powers and functions usually exercised as Prescribed Officers for matters likely to lead to dismissal. The Assistant Commissioner, ESC, has a specific delegation of prescribed responsibility for discipline (Chapter 2, Part 3 of the *Crime and Misconduct Act 2001*) and reports directly to the Commissioner on all matters of discipline and complaint management.

The Ethical Standards Command is comprised of -

- Ethical Practice Branch;
- Inspectorate and Evaluation Branch;
- Internal Audit;
- Legal and Policy Unit; and
- Internal Investigations Branch.

The Internal Investigations Branch (IIB) and the Ethical Practice Branch, supported by the Legal and Policy Unit, are more directly involved in the discipline process.

The respective role and responsibilities within QPS for dealing with complaints such as the role of the Professional Practice Managers is discussed in chapter 5.

QPS makes a significant investment in the police integrity system as a key strategic priority for the QPS,

The QPS is committed to the promotion and maintenance of the highest standard of ethical behaviour and professional practice as a key strategic priority with \$235 million or 16.6% of total QPS resources in the 2007-08 financial period committed to developing and maintaining professional standards and ethical practices.⁹³

CMC

Under the *Crime and Misconduct Act 2001*, the CMC is responsible for the '*achievement of the Act's purposes*'.⁹⁴

... the commission is to help units of public administration to deal effectively, and appropriately, with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly more serious cases of misconduct.⁹⁵

The CMC has primary responsibility for dealing with official misconduct, and is responsible for monitoring how the Commissioner of Police deals with police misconduct.⁹⁶ The CMC is responsible for '*expeditiously*' dealing with misconduct and acting as it considers most appropriate having regard to the

⁹³ QPS Submission (2009), op. cit., p. 11.

⁹⁴ *Crime and Misconduct Act 2001*, s 7.

⁹⁵ *Crime and Misconduct Act 2001*, s. 5(3).

⁹⁶ Section 45.

four principles in section 34: cooperation, capacity building, devolution and public interest.

Specifically, the Act provides that the CMC has an '*overriding responsibility to promote public confidence*' in the integrity of the QPS and the way in which it deals with misconduct.⁹⁷ The CMC also has a '*lead role in building the capacity*' of the QPS to prevent and deal with cases of misconduct effectively and appropriately.⁹⁸ This gives the CMC a much broader role and responsibility than a monitoring or review function.

The CMC consists of five commissioners, one of whom is full time and serves as the Chairperson.⁹⁹ The *Crime and Misconduct Act 2001* provides the CMC's roles and responsibilities to the commission (chairperson and commissioners) and appoints the chairperson as the commission's chief executive officer responsible for the administration of the CMC and the proper performance of the CMC's functions.¹⁰⁰ The Assistant Commissioner, Misconduct is responsible to the Chairperson for the proper performance of the CMC's misconduct functions.¹⁰¹

PCMC

The Parliamentary Crime and Misconduct Committee has a monitor, review and reporting role concerning the performance of the CMC¹⁰² and may direct the CMC to investigate a matter involving misconduct.¹⁰³ The bipartisan Parliamentary Committee by the issue of guidelines may also direct the CMC 'about the conduct and activities' of the CMC.¹⁰⁴

Parliamentary Commissioner

The Parliamentary Crime and Misconduct Commissioner is appointed as an officer of the Parliament '*who helps the [PCMC] in the performance of its functions*'.¹⁰⁵ Specifically, as may be required by the PCMC, the Parliamentary Commissioner's functions include to audit, investigate, review and report in respect of the CMC's activities, and holds related powers.¹⁰⁶

Queensland Civil and Administrative Tribunal (QCAT)

Under the *Crime and Misconduct Act 2001*, the QCAT effectively performs an additional civilian oversight role in the police complaints system in respect of disciplinary proceedings intended to-

- protect the public;
- uphold ethical standards within QPS; and

⁹⁷ *Crime and Misconduct Act 2001*, s.34(d).

⁹⁸ *Crime and Misconduct Act 2001*, s.34(b).

⁹⁹ The chairperson must be qualified by prescribed judicial service, or eligibility for such judicial appointment. *Crime and Misconduct Act 2001*, ss. 223, 224.

¹⁰⁰ *Crime and Misconduct Act 2001*, s.251.

¹⁰¹ *Crime and Misconduct Act 2001*, s.238.

¹⁰² *Crime and Misconduct Act 2001*, s. 292.

¹⁰³ *Crime and Misconduct Act 2001* s. 294.

¹⁰⁴ *Crime and Misconduct Act 2001*, ss. 296-299.

¹⁰⁵ *Crime and Misconduct Act 2001*, s. 10.

¹⁰⁶ *Crime and Misconduct Act 2001*, ss. 314-320.

- promote and maintain public confidence in the public sector.¹⁰⁷

Relationships

The terms of reference for this Review seek recommendations to improve public confidence in a system that is simple, effective, transparent and strong.

The police complaints and misconduct system has been weakened by the nature of inter-agency relationships.

Some of the relationship difficulties begin with misunderstandings between officers on respective roles and procedures of the QPS and the CMC, or they may arise in the way that differences of opinion are handled concerning how specific cases should be resolved. Of course unanimity is not expected, nor desired, in all cases as part of the check and balance oversight function, but processes and relationship dealings need to support efficient and effective consideration of legitimate differences of opinion.

An agreed way forward on known areas of policy and procedural disagreement will help minimise unnecessary and repetitive tension. The agencies have identified the following known contentious complaint handling practices where QPS and CMC could work on a forward resolution: general format of outcome advice letters to complainants; the circumstances in which the CMC will give consideration to using its coercive powers to further an ESC investigation; and the application of the CMC's policy of assessing matters at the highest.¹⁰⁸

Ongoing *joint* training exercises such as in investigative practices and decision-writing requirements (see Recommendation 23, p. 89) and other collaborative opportunities such as joint investigations (see Recommendations 1(b)(iv), 56, pp. 35, 126) will help in managing shared understandings of role, responsibilities and techniques. Opportunities for greater collaboration between the CMC and the QPS in building organisational capacity for preventing misconduct will also support positive cooperative effort between the agencies in a broader focus on prevention than in specific misconduct investigations and decision-making. (See recommendations 29, 47, 50, 51, pp. 99, 116, 121, 123, in addition to CMC's recent Misconduct area review developments in business emphasis.)

However, in addition to this effort in dealing with misunderstandings and building greater collaborative effort, the nature and extent of relationship difficulties are serious and need to be addressed in the general sense.

This was the consistent theme that arose during the Review's consultations, it has been the subject of public and media commentary, and it cannot be avoided. It was even claimed by a number of practitioners in the system, that the system would '*work fine enough*' and minimise criticisms such as for

¹⁰⁷ *Crime and Misconduct Act 2001*, s.219A.

¹⁰⁸ CMC Policy - Assessment, 4.1.1: '*Assessing at highest potential. A complaint shall be assessed at its highest potential in terms of the seriousness of the conduct alleged, **having regard to the circumstances** and in the context of any relevant legislation, policy or procedures*'. (emphasis added)

excessive timeframes if relationships were more functional. The aggravation experienced by resistance and lack of cooperation caused the impact on the misconduct system to be described as so ridiculous that *'it would be easier to convict someone of murder in the criminal jurisdiction than it is to lay a charge for breach of discipline against a police officer'*. Even at the minor end of the scale of irritation, many officers complained of *'aggressive'*, *'overly emotional'*, and *'unprofessional'* tones used *'regularly'* in written correspondence and documents which *'offended'*, undermined respect in working relations, provoked unnecessary correspondence in exchange, or perpetuated an unproductive relationship.

There were numerous examples throughout the system of relationship difficulty indicating that not only were the concerns not isolated, but they were contributing to some of the system's procedural problems such as excessive timeframes, duplication, inconsistencies, over-investigation and over-lengthy written decisions.

The CMC and the QPS share a history where joint operations and investigations have succeeded and enjoyed a positive spirit of cooperation. It also needs to be clarified that not all who are involved in misconduct system dealings between the QPS and the CMC have poor relationship experiences. Many are to be commended for their restraint in making measured and moderate responses. Ethical leadership in the performance of individual roles will do much to avoid the lowest common denominator setting the standard.

Healthy debate and discourse is to be expected between an agency and its oversight body, but the current concerns go well beyond that characterisation and are undermining the performance of the misconduct system, its *'expeditious'* outcomes, and the legislation's express priorities for *'cooperation'*, *'capacity building'*, and *'public confidence'*.

A base standard of due diligence in executing roles and responsibilities with professional courtesy, objectivity and respect will foster a basic level of trust and cooperation in steering a significant improvement in working relations and better legislative outcomes.

It is with extraordinary irony that the *Code of Conduct for the Queensland Public Service* and the *CMC Code of Conduct* obliges employees to principles, values and standards of conduct that would obviate many of the relationship obstacles now obstructing effectiveness and efficiency of the misconduct system. Relevantly, the Codes of Conduct oblige,

- integrity and impartiality
 - commit to the highest ethical standards
 - manage conflicts of interest
 - contribute to public discussion in an appropriate manner
 - demonstrate a high standard of workplace behaviour and personal conduct
- promoting the public good
 - commit to excellence in service delivery

- accountability and transparency
 - ensure diligence in public administration
 - commit to innovation and continuous performance improvement¹⁰⁹

And,

- respect for persons
 - respect
 - responsiveness
 - collaboration¹¹⁰

The Codes of Conduct also expect '*Managerial behaviour sets the tone for the conduct of all employees. Managers and supervisors have a responsibility to model and promote this Code*'.¹¹¹ Indeed, an even greater responsibility for positive role modelling of acceptable standards of conduct would be expected with leadership roles in the misconduct system.

A number of measures should assist ethical leadership improve working relations, productivity, and public confidence-

Ethical training

Joint *Code of Conduct* training for all officers, including managers, from both agencies who are involved in the police complaints system. The training should include a focus on the principles, values and standards of conduct identified above. A number of sessions will need to run to accommodate appropriately the numbers of staff and respective availabilities. Each session should have a mix of CMC and QPS staff, and the venues should alternate between both agencies. As the new (sector-wide) Code of Conduct was introduced from 1 January 2011, this initiative should coordinate with existing training budgets and obligations, and it should be delivered as a matter of priority within the next six months.

Limited tenure

A strategy of limited tenure¹¹² (staggered for continuity and knowledge management within work units) which rotates staff to keep the workplaces fresh and alert, and minimises concerns of 'capture' or 'bias' from incumbency is supported.

At the QPS, senior officers serving in key leadership roles in the ESC with direct responsibilities in the management of complaints should be limited to a

¹⁰⁹ *Code of Conduct for the Queensland Public Service*, Queensland Government, (2011), pp. 6-9, 13.

¹¹⁰ *ibid.*, p.10.

¹¹¹ *ibid.*, p. 5; *CMC Code of Conduct* (2010), pp. 7, 12.

¹¹² 'Tenure' is the meaning in the general sense referring to the period an officer performs a role, rather than in the technical sense where a tenured position may be contrasted with alternative employment methods such as appointment, contract.

period in each role of no more than four years.¹¹³ This strategy of regularly opening up positions for the experience of other officers would also support greater opportunities within the QPS for leadership experience in integrity responsibilities and functions. Spreading the availability of that experience is advantageous for the police organisation generally and should be considered as advantageous for the personal career prospects for the officers involved in the consideration of their promotion. (See similar recommendation prioritising the organisational value of integrity-related service in promotions in Recommendation 3(d), and p. 84.) In consultation with the QPS, nomination of the key roles concerned in the ESC is made in Recommendation 3.

At the CMC, QPS secondees in the Misconduct area at the CMC should serve ideally for a minimum of 2 years but for a total period of no more than four years. The QPS secondees need to be redeployed to the QPS by the end of their term and not as and when they might successfully apply for a role as this may expose the officer to unacceptable delay in return to duties at the QPS, and may over time fail to support that officer in maintaining currency of relevant skills. The Panel understands that a maximum four year policy is now in place but that some long-serving QPS secondees pre-dating the policy remain. Human resource management support will be required between QPS and CMC to advise on appropriate transitioning arrangements for any QPS secondees currently at the CMC who have served in current positions for a period longer than four years. Allocation to non-police related investigations offers an interim management measure, pending implementation of the change management plan.

Under the *Crime and Misconduct Act 2001*, the duration of appointment of the CMC's Assistant Commissioners and '*senior officers*' is limited in the first instance to five years but may be extended for a further five years on consideration of a high standard of past and expected future performance; and only if a further reappointment '*is necessary for the efficient operation of the [CMC]*'¹¹⁴ can a total term of appointment extend to the maximum of 15 years. A '*senior officer*' is defined in terms of '*principal duties*' that '*relate directly to the performance*' of the CMC's functions.¹¹⁵ The Assistant Commissioners and senior officers are not appointed under the *Public Service Act 2008*.

This Review notes concerns, and past experience leading to the current provision made in 2006 for term extensions, that a further limitation on tenure would adversely affect the CMC's ability to recruit and retain senior staff of sufficient operational expertise. The three year review of the CMC by the Parliamentary Crime and Misconduct Committee in 2006 noted that although it understood the recruitment concerns raised by the CMC when the duration of appointment was limited to eight years, the PCMC was '*eager to ensure there was healthy renewal in the senior ranks of the Commission*'. The

¹¹³ The four year limitation attaches to each role individually and as such it is not intended to restrain career progression or promotion from one role to another within the ESC, as a meritorious assessment of performance may permit.

¹¹⁴ *Crime and Misconduct Act 2001*, s.247(1), (2), (3A).

¹¹⁵ *Crime and Misconduct Act 2001*, s.247(5).

PCMC reinforced the need for the CMC to '*engage in thorough and effective succession planning*' and '*investigate and implement appropriate recruitment, training and retention strategies*'. The PCMC then recommended that,¹¹⁶

... future Parliamentary Crime and Misconduct Committees monitor the issues of succession planning and senior staff retention and renewal at the Crime and Misconduct Commission.¹¹⁷

The next three year review in 2009 noted a range of workforce management strategies that included the commencement of a leadership and management development program and a phased retirement framework, but that succession planning was a '*major strategy still to commence*'. The PCMC's report does not indicate any further consideration of the issues of succession planning and senior staff retention and renewal in the context of its 2006 provisional support to the relaxation of the limitation on tenure.¹¹⁸

This Review is not privy to the exchange of correspondence noted by the PCMC in its 2006 report concerning the substance of the CMC's recruitment difficulties for '*senior officers*' and its priority concern for succession planning, but this Review does note that unlike for officers at the CMC below '*senior officer*' level (who are employed under an award or on contract) there is a statutory preservation of rights¹¹⁹ for public sector employment available for '*senior officers*' and assistant commissioners which addresses any competitive disadvantage that the CMC might suffer compared with the more secure employment environment of the broader public sector. Although the relaxation of the statutory limitation on tenure was made more than four years ago, the CMC maintains that recruitment difficulties are still relevant today.

This Review considers that the next three year review by the PCMC is the appropriate forum to consider the impact of (by then) six years of workforce management strategies directed at addressing the recruitment and succession planning concerns, and whether it is still necessary for section 247(3A) of the *Crime and Misconduct Act 2001* providing for a 15 year maximum (in specified circumstances). Alternatively, a reversion to the pre-2006 eight year tenure limit might be considered by the PCMC following a full consideration of the issues.

However in the interim, the concept of a rotational tenure in and out of the CMC's Misconduct area would support exchange of experiences and perspectives between the broader public service and the oversight agency for misconduct. Towards that objective, and without affecting existing rights in terms of appointment at the CMC, this Review recommends development of a dedicated workforce management strategy, in consultation with the broader public sector (through the Public Service Commission in the first instance) that identifies and facilitates suitable secondment opportunities, or staff exchange programs, for officers of the CMC Misconduct area (including

¹¹⁶ PCMC Report 71, 2006, p. 7.

¹¹⁷ PCMC Report 71, 2006, p. 8.

¹¹⁸ PCMC Report 79, 2009, pp. 4, 5, 110.

¹¹⁹ *Crime and Misconduct Act 2001*, s. 249.

'senior officers') into the Queensland public service and for officers of public sector agencies into the CMC. Any current legislative or employment arrangement disincentive for officers employed under the *Public Service Act 2008* to undertake a term of service with the CMC should be remedied. This Review supports a statutory preservation of rights provision for officers below senior officer level, similar to section 249 of the *Crime and Misconduct Act 2001* (in favour of the Assistant Commissioners and senior officers). The positive effect of such provision should include a natural turnover of staff after reasonable periods in the CMC as the source public service agencies manage their outside secondments in the normal course; as well as the removal of the current employment security disincentive for officers below 'senior officer' level to undertake service at the CMC, thereby addressing a current obstacle for the CMC in filling some of its positions.

The secondment and staff exchange strategy is not intended to disaffect any current employment entitlements for officers of the CMC or of public sector agencies. The tenure entitlements for 'senior officers' participating in this initiative should be preserved such that the duration of the secondment outside the CMC does not form part of the duration of appointment counted in the maximum term.¹²⁰

The human resource management areas in both the CMC and the QPS should prepare workforce management plans that will implement these strategies appropriately and transparently.

Renewed commitments

To mark a fresh start, the Chairperson of the CMC and the Commissioner of Police could exchange formal *Statements of Expectations* followed by an exchange of *Statements of Intent* that confirm their understandings and commitments to leadership in the principles of section 34 of the *Crime and Misconduct Act 2001*. Similar to a memorandum of understanding (without needing the time and process to agree to the particular wording of one document in signing off) and not appropriate as a charter of service between the chief executives, statements of expectations and intent would affirm their respective roles and what they will each contribute in making a mutual commitment to promoting public confidence. More common in a commercial context, Statements of Expectations and Intent inform mutual obligations and accountabilities whilst assuring independence of roles (e.g. Minister with a government owned corporation).

Once settled, the Statements of Expectations and Intent can be promulgated throughout both agencies and included as available documents on their respective agency's website as a public commitment to addressing public confidence concerns about effective working relations.

¹²⁰ That is, for example, if a 'senior officer' three years into a five year contract at the CMC undertakes a two year secondment, the 'senior officer' would be entitled to the remaining two years of contract of service on return to the CMC.

An additional exceptional circumstances misconduct role for the Parliamentary Crime and Misconduct Commissioner

Where a fundamental system or serious dispute or disfavour between the QPS and the CMC concerning the operation of the *Crime and Misconduct Act 2001* presents a serious risk of harm to the public confidence in agency's integrity and the way misconduct is dealt with, then there needs to be an appropriate forum to assist in a consideration of those matters.

The CMC has an '*overriding responsibility*'¹²¹ under the legislation to '*promote public confidence*' in agency integrity and the way in which an agency is dealing with misconduct. In its oversight role of the CMC, the functions of the Parliamentary Crime and Misconduct Committee include,

- (b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention-
 - (i) matters relevant to the commission;
 - (ii) matters relevant to the performance of the commission's functions or the exercise of the commission's powers;
- ...
- (f) to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission...¹²²

Public confidence is a 'relevant' matter to the CMC, and may be the subject of reporting to the Legislative Assembly. The Parliamentary Crime and Misconduct Commissioner acts as an agent of the Parliamentary Committee according to codified powers, and '*helps the Parliamentary Crime and Misconduct Committee in the performance of its functions*'.¹²³

Academic commentary has warned of the risks involved in a public confidence failing in police complaints, discipline and misconduct system,

... it is the way in which the complaints handling function is performed that largely determines the level of community trust in citizen's watchdog bodies like the CMC. It is crucial to the credibility of the Commission that it maintains public confidence in its complaints management process as this confidence translates into the community's level of trust for the organisation as a whole.

...
In Queensland and other Australian States, and in Britain, Northern Ireland, New Zealand and Canada, history has shown that once an oversight body loses the community's trust it is all but impossible to

¹²¹ *Crime and Misconduct Act 2001*, s. 34(d).

¹²² *Crime and Misconduct Act 2001*, s. 292.

¹²³ *Crime and Misconduct Act 2001*, s. 10.

regain. When that happens it has inevitably led to the demise of the oversight body.¹²⁴

The availability of a suitable, time-effective mechanism to facilitate an independent hearing of major concerns in the operation of the police complaints and misconduct system would support and safeguard public confidence in the CMC and the QPS in their roles. Although a responsible Minister(s) in such a scenario may be concerned by matters to seek a resolution of those portfolio responsibilities in the public interest, the Minister may be reluctant to act, out of a caution to keep at arm's length from the detail that generated the difficulty in the first instance and not be implicated in any suggestion of political interference in policing or independent oversight roles.

The Parliamentary Crime and Misconduct Commissioner has the stature (by virtue of skill and experience afforded the eligibility requirements for appointment) and the independence (as an officer of the Parliament) to perform a role in this scenario. The Parliamentary Commissioner's current functions are not inconsistent with the objective of an additional role to receive the Chairperson of the CMC and the Commissioner of Police in a discussion about a serious matter that either chief executive reasonably believes will adversely affect public confidence in the police complaints, discipline and misconduct system.

The Parliamentary Commissioner's role in that discussion could range from affording an independent hearing and consideration of the concerns to offering (advisory only) guidance in their resolution, as may be appropriate. The Parliamentary Commissioner may make recommendations to the Parliamentary Committee concerning the need for further examination and report on systemic or legislative concerns in pursuance of the Parliamentary Committee's functions under section 292 of the *Crime and Misconduct Act 2001*, and within the range of actions the Parliamentary Committee may take under section 295 of the Act.

As explained earlier in this chapter (see pp. 10-28), the operation of the devolution principle can cause significant public confidence concern. As highlighted in the legislation's explanatory notes,¹²⁵ the additional auditing function for the Parliamentary Commissioner under section 314(2)(a)(ii) of the *Crime and Misconduct Act 2001* was '*intended to allow the committee and the commissioner an ability to see if the commission is having proper regard to the principles [s. 34: cooperation, capacity building, devolution and the public interest which includes promoting public confidence] for performing the commission's functions in its decisions about referring and monitoring misconduct*'. That parliamentary oversight is triggered by the bipartisan, statutory committee of Parliament. This Review's exceptional circumstances function would complement Parliament's intention for parliamentary oversight of the devolution principle in practice by providing the oversight framework

¹²⁴ Lewis, Colleen, "Crime and Misconduct Commission: Moving Away from Fitzgerald", *The Fitzgerald Legacy*, eds, Lewis, C., Ransley, J. and Homel, R., Australian Academic Press, 2010, pp. 57-80, p. 77.

¹²⁵ Crime and Misconduct Bill 2001 Explanatory Notes, p. 83, clause 314.

with the facility for principal stakeholders to expedite Parliamentary Committee consideration and action, if required.

This extension of the Parliamentary Commissioner's role would exclude any role in merits review of individual cases although reference may be made to an individual case to highlight the systemic or broader considerations giving rise to the significant public confidence concerns. This recommendation does not include any new powers of direction for the Parliamentary Commissioner, and the Parliamentary Committee.

Review of the intended exceptional use of this role should be included in the PCMC's three-yearly reviews of the CMC.

Option 1 - Preferred option

This exceptional circumstances meeting would be triggered by written request to the Parliamentary Commissioner from at least one of the following stakeholders-

- Chairperson, CMC;
- Commissioner of Police;
- Responsible Minister(s); or
- PCMC,

or on the Parliamentary Commissioner's own motion.

Option 2 - default option

Alternatively, the exceptional circumstances meeting would be triggered by written request to the Parliamentary Committee from at least one of the following stakeholders-

- Chairperson, CMC;
- Commissioner of Police;
- Responsible Minister(s); or
- Parliamentary Commissioner,

or on the Parliamentary Committee's own motion. Once triggered, the bipartisan decision of the Parliamentary Committee should be sought on an urgent basis for communication to the Parliamentary Commissioner.

Currently, the Parliamentary Commissioner may be required by the Parliamentary Committee to *'perform other functions the parliamentary committee considers necessary or desirable.'*¹²⁶ This Review recommends that a specific legislative exceptional circumstances function be provided for in section 314 of the *Crime and Misconduct Act 2001*. However, bipartisan support of the Parliamentary Committee is first required for the functions specified in section 314(2).

Time may be of the essence in holding the exceptional circumstances discussion. As such, consideration should be given to excluding this additional exceptional circumstances function from the requirement currently in section 314 relating to functions for prior bipartisan approval of the function. In lieu of the Parliamentary Committee's prior approval, the Parliamentary

¹²⁶ *Crime and Misconduct Act 2001*, s.314(2)(g).

Commissioner should provide notice of the public confidence meeting when known to the PCMC and the Parliamentary Commissioner should provide an appropriate summary of outcomes to the PCMC for tabling in Parliament on the next sitting day.

The Parliamentary Commissioner acts under the aegis of parliamentary privilege in undertaking the functions specified in section 314(2) of the Act.¹²⁷ Legislative amendment for this additional exceptional circumstances function should ensure clarity of the intention that the Parliamentary Commissioner in 'helping' the Parliamentary Committee in its oversight function of the CMC. This 'help' is served through a responsive capacity in receiving and bringing '*relevant*' matters to the '*attention of the Legislative Assembly*' and facilitates the potential for a more time-effective opportunity for the police complaints system to have serious concerns reviewed outside the standing three year review timeframe, as may be recommended by the Parliamentary Commissioner to the Parliamentary Committee. It is intended that the report prepared for the purpose of the Parliamentary Committee and the Legislative Assembly would be a '*proceeding in the Assembly*' not to be '*impeached or questioned in any court or place out of the Assembly*'.¹²⁸

The exceptional circumstances function would be limited to issues that raise systemic concerns of such urgency or of such potential gravity that risks public confidence in, or the integrity of, the police complaints, discipline and misconduct system. This Review recommends a suite of changes directed at significant system improvement as sought by its terms of reference.¹²⁹ This exceptional circumstances function for the Parliamentary Commissioner is an additional measure in the system's framework that provides an appropriate forum to address concerns when all else has failed.

The following recommendations are made to provide a framework to support improvements in effective relationships. Chapters 5 and 6 also recommend a range of strategies to improve structures, systems, policies and procedures to minimise the system's vulnerability to relationship problems.

RECOMMENDATION 2:

It is recommended that-

- a) joint *Code of Conduct* training with CMC and ESC officers whose duties involve dealing with the other agency in the police complaints system be held as a matter of priority; and

¹²⁷ See *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* [2001] QCA 218; subsequent clarification in the *Crime and Misconduct Act 2001*, s. 323; and *Parliament of Queensland Act 2001*, ss. 8, 9 giving the same effect as Article 9 of the Bill of Rights (1688).

¹²⁸ See s. 323 of the *Crime and Misconduct Act 2001* declaring parliamentary privilege of reports at the request of the PCMC. See also, *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444 (before 2001 clarification in the *Crime and Misconduct Act 2001*) where a monthly CJC report to the PCMC was a 'proceeding in Parliament' attracting protection.

¹²⁹ Copy at Appendix B.

- b) following *Code of Conduct* training, the QPS and the CMC jointly identify and resolve agreement on known contentious complaint handling practices (e.g. outcome advice letters, internal policies such as the use of coercive powers, and assessments).

RECOMMENDATION 3:

It is recommended that appropriate workforce management and transition plans be developed and implemented in the CMC and the QPS to give effect to the following strategies aimed at-

- minimising concerns of 'capture' or 'bias' from long periods of incumbency;
 - keeping workplaces fresh and alert, and protecting currency of skills;
 - increasing opportunities for more staff to gain experience in preventing and dealing with misconduct; and
 - supporting exchange of inter-agency experiences and perspectives:
- a) a strategy of limited tenure (of no more than four years in each role) for the following ESC roles: Assistant Commissioner, ESC; Chief Superintendent (Operations Coordinator); Superintendent, Internal Investigations Branch; State Coordinator, Internal Investigations Branch;
- b) if Recommendation 1 (p.35) is not approved, then a strategy of limited tenure (two years minimum, four years maximum) in respect of the QPS secondees in the Misconduct area of the CMC;
- c) if Recommendation 1 is approved, then a strategy of limited tenure (two years minimum, four years maximum) in respect of the QPS secondees in the Misconduct area of the CMC who deal with non-police complaints;
- d) a strategy of recognising the service of QPS officers in ESC, Professional Practice Manager, and CMC roles as a relevant consideration in favour of promotional merit within the QPS, to assist in recruitment to the roles and to recognise the organisational priority of quality service in this function; and
- e) a strategy that identifies and facilitates suitable secondment opportunities, or staff exchange programs, for officers of the CMC Misconduct area (including for 'senior officers') into the Queensland public service departments and agencies and for officers of public sector agencies into the CMC.

RECOMMENDATION 4:

It is recommended that a statutory preservation of rights provision in respect of officers at the CMC below '*senior officer*' level (similar to section 249 of the *Crime and Misconduct Act 2001*) be made, as well as any other necessary legislative amendments to ensure that the current employment entitlements for officers of the CMC or of public sector agencies are not diminished or otherwise adversely affected by participation in the secondment and staff exchange strategy (see recommendation 3(d) above).

RECOMMENDATION 5:

It is recommended that the ongoing need for a maximum tenure of 15 years for assistant commissioners and 'senior officers' of the CMC (as provided for under section 247(3A) of the *Crime and Misconduct Act 2001*), be referred by the responsible Minister to the PCMC for its consideration in monitoring the CMC's progress in succession planning and recruitment strategies in the next three year review of the CMC in 2012.

RECOMMENDATION 6:

It is recommended that the Commissioner of Police and the Chairperson of the CMC exchange formal *Statements of Expectations and of Intent* to affirm their respective roles and what their agencies can contribute in making a mutual commitment to promoting public confidence in the police complaints and misconduct system and in the principles of section 34 of the *Crime and Misconduct Act 2001*. This exchange should occur every three years or within six months after the change of a chief executive, whichever occurs first.

RECOMMENDATION 7:

It is recommended that the *Crime and Misconduct Act 2001* be amended to add an exceptional circumstances role for the Parliamentary Crime and Misconduct Commissioner in support of the section 34 principles.

4.3 Organisational values and ethical health

Nearly 80 per cent of Queenslanders surveyed in the *National Survey of Community Satisfaction with Policing* believe in the integrity of Queensland police officers.¹³⁰

A model for the QPS management of police complaints that promotes public confidence includes a consideration of organisational values and ethical health measures as these provide the touchstone for an organisation's integrity system.

The Ethical Standards Command, QPS undertakes a range of leading initiatives in promoting ethical behaviour and professional practice. During consultations and in the course of analysis in this Review, additional measures have been suggested in promoting public confidence in the police complaints system. These are included in chapters 5 and 6 within the analysis of a simple, effective, transparent and strong model (see pp. 50-126).

4.4 Outcomes

In the final analysis, public confidence in the police complaints system depends on results.

The Union [QPUE] believes that the current disciplinary processes applying to its members are not only inefficient, but are in fact so

¹³⁰ QPS Annual Report 2009-10, p. 40.

dysfunctional as to actually have an adverse impact in the very areas that the system is intended to address. By that we mean that the system currently operates in a way that engenders such levels of anxiety and resentment within the QPS workforce so as to actually result in a poorer Police Service overall. Any organisation with disillusioned staff serving on the front line cannot provide first class service delivery to its clients, the Queensland community. Such a situation in turn impacts upon the reputation of the body as a whole.¹³¹

... the QPCOU sees an immediate need for improvement so that the community, and police officers, can be assured of a robust system that is fair and timely.¹³²

This Review found, as others have before it, that the system suffers excessive timeframes, and is unfair.

It is unfair to subject officers who must submit to a system that is overly legalistic and adversarial; inflexible, complex and administratively burdensome and who perceive or experience inconsistencies in sanctioning and an undue emphasis on punitive measures.

It is unfair to workplaces in the QPS where morale is impacted by the stress of unresolved matters or where unacceptable conduct is not addressed in a timely and effective way.

And, it is unfair to those complainants who regard outcomes as slow and disproportionate to their grievance, who feel unacknowledged or ignored by a failure to engage with their complaint with efficiency and effectiveness.

The public is entitled to ask whether the system costs a fair price.

These problems are not new. Several reviews before this one have identified similar concerns.¹³³ Those new and experienced working in the system can articulate many of the obstacles themselves.

This Review is tasked with considering changes that would support a model police complaints, discipline and misconduct system that is simple, effective, transparent and strong. This Review frames its findings and suggestions around those four essential characteristics in the chapters that follow.

¹³¹ QPUE, Submission to the Independent Review Panel, April 2011, p. 2.

¹³² QPCOU, Submission to the Independent Review Panel, p.1.

¹³³ CMC Report, *Setting the Standard*, p. 10; Service Delivery Performance Commission (2008); CJC (1997); Bingham (1996); Public Sector Management Commission (1993).

5.0 SIMPLE AND EFFECTIVE

*A good police discipline system is as **simple** as possible. It is clear about matters of substance and process, and is no more complex and resource-intensive than is necessary to achieve its purpose.*

*An **effective** discipline system achieves its intended purpose. Its performance can be judged by the outcomes it delivers for the organisation.*¹³⁴

5.1 Assessments and Investigations

In Queensland, the categorisation of police conduct the subject of a complaint is more complex than it needs to be. Complaints are assessed according to five categories of conduct, as follows:

Table 1: Conduct types in the Queensland Police Complaints, Discipline and Misconduct System*

<i>less serious</i>		↔		<i>more serious</i>
Client service complaint	Breach of discipline	Police misconduct ¹		Official misconduct
		Category B	Category A	
.Organisational or service delivery issue .Off duty conduct .Not unreasonable nor unlawful .Not misconduct nor a breach of discipline	.Breach of legislation, policy or commissioner's direction, e.g. incivility, loss of property, absence from duty without reasonable excuse .Not misconduct	Police misconduct ¹ that do not fall in the more serious Category A.	Police misconduct ¹ that is the subject of CMC direction under s.40 of the <i>Crime and Misconduct Act 2001</i> , e.g. involves alleged corruption, inappropriate association, drug offences, grievous bodily harm, victimisation.	.Conduct as a police officer which, if proven, could be a criminal offence, or a disciplinary breach providing reasonable grounds for terminating the officer's employment.
Source of Authority				
Code of Conduct	s. 1.4 <i>Police Service Administration Act 1990</i>	Sch. 2 <i>Crime and Misconduct Act 2001</i> s. 1.4 <i>Police Service Administration Act 1990</i>	Sch. 2 <i>Crime and Misconduct Act 2001</i> s. 1.4 <i>Police Service Administration Act 1990</i>	s. 15 <i>Crime and Misconduct Act 2001</i>
Responsibility				
QPS	QPS	QPS	CMC, may devolve to QPS	CMC, may devolve to QPS

*Conduct may also be subject to separate criminal or civil proceedings.

¹Conduct that is not official misconduct that-

- is disgraceful, improper or unbecoming an officer; or
- shows unfitness to be or continue as an officer; or
- does not meet the standard of conduct the community reasonably expects of a police officer.

NB. These three elements of the definition for 'police misconduct' under the *Crime and Misconduct Act 2001* are the same as those contained in the definition of 'misconduct' under the *Police Service Administration Act 1990*. The 'police misconduct' definition adds 'other than official misconduct, of a police officer...' (*Crime and Misconduct Act 2001*, Sch. 2).

¹³⁴ 'Simple' and 'effective' are two of the four essential characteristics of a model police complaints system: CMC Report, pp. 11-12.

5.1.1 System focus

The objective for categorising the conduct is to determine which agency has primary responsibility for dealing with the complaint, and for monitoring decisions.

The definitions used in the typology of conduct are not simple-

- 'misconduct' has two different meanings: it could be 'official misconduct' or 'police misconduct' under the *Crime and Misconduct Act 2001*, or 'misconduct' under the *Police Service Administration Act 1990*;
- 'misconduct' under the *Police Service Administration Act 1990* and 'police misconduct' under the *Crime and Misconduct Act 2001* have the same (subjective) elements as the basis of the definition, but the former includes 'official misconduct' matters whereas the latter expressly excludes 'official misconduct',¹³⁵ and
- some category A matters in practice can be more serious than official misconduct matters, partly due to a CMC policy that assesses a complaint at its 'highest potential' (e.g. common complaint of too tight handcuffs is assessed as official misconduct).

This complexity means that the categorisation framework is opaque to the public and police officers generally.

The CMC also applies a separate range of categories (1-5, Category 1 being for the 'most serious, most sensitive and high profile' matters) in its initial complaint assessment process according to an internal CMC policy that guides allocation of matters and resourcing within the CMC. CMC's categories 1,2 and 3 concern official misconduct and police misconduct.¹³⁶

At the QPS, the Ethical Standards Command (ESC) decides whether devolved and police misconduct matters will be investigated by the ESC centrally or devolved further to the regions. On receipt of the complaint, the regional Assistant Commissioner may delegate it further within the region to an officer for action.¹³⁷ According to consultations undertaken in this Review, it is not unusual for it to be some weeks if not months after a complaint is first received into the system before it is finally received by the officer tasked with commencing action in response to it. Whether the complaint is categorised as official misconduct, category A or B police misconduct, or a breach of discipline is not of primary concern for the investigating officer in getting started, nor to the complainant who made the complaint weeks or months earlier.

¹³⁵ Therefore, under section 7.2 of the *Police Service Administration Act 1990*, QPS officers and staff are obliged to report a broader range of conduct than is imposed on public officials generally under the *Crime and Misconduct Act 2001*.

¹³⁶ CMC Categorisation, Prioritisation, Distribution for devolved agency and Queensland Police Service (September 2010), pp. 2-3.

¹³⁷ See Figure 10, at p. 34, CMC Report (2010).

Conduct categories for the disciplinary systems in other Australian jurisdictions are less complex than Queensland (mostly two or three categories), and tend not to describe the nature of the conduct but demarcate according to levels of seriousness or by the action focus such as managerial intervention or local complaint resolution.

Recent reviews of the Western Australian Policing Service (2004), the Australian Federal Police (2002) and the Victoria Police (2007) favoured a direction towards general employment law with an emphasis on,

remedial management of misconduct or poor performance and dispense with punitive sanctions except for those deserving dismissal.¹³⁸

This approach keeps it simple and effective,

- remedy the conduct of officers who can be assisted; and
- remove from employment those who cannot.¹³⁹

The Queensland Police Union of Employees expressly supports this approach for the Queensland system because, '*[w]hat is clearly lacking in the current system of discipline is any focus upon the welfare and constructive improvement of the officers who make up the Police Service*'.¹⁴⁰

The Focus Groups in 2010 involving 538 participants considered that the discipline process was overly focussed on delivering punitive sanctions as opposed to remedial action. Participants suggested the '*discipline process and associated training needed to refocus to supporting positive or corrective behaviours amongst subject officers*'.¹⁴¹

Consultations in the Review made it clear that in addition to the professional and personal toll for the subject officer in a system that fails to effect timely remedial intervention, there were significant costs to the organisation in workplace morale and lower productivity associated with '*broken*', '*recalcitrant*', '*frustrated*', '*disenchanted*', and '*cynical*' employees who had '*suffered the system*'. Apart from these secondary behaviours, excessive time delay in '*failing to deal with* unacceptable conduct by fellow officers also impacted negatively in workplaces and on respect for the system.

Timely notice as well as timely outcomes need improvement,

... the current disciplinary system has the consequence of disaffecting members not only because of the substantial delays, but because the subject member is usually kept completely in the dark about the progress of the investigation. Effectively then an officer suffers the

¹³⁸ Office of Police Integrity, *A Fair and Effective Victoria Police Discipline System*, OPI, Melbourne, 2007, p. 13.

¹³⁹ *ibid.*, p. 13.

¹⁴⁰ QPUE Submission to the Independent Review Panel, pp. 5-6.

¹⁴¹ Focus Group Report, p. 20.

'double whammy' of a protracted investigation combined with ignorance of its progress and possible outcome, thereby exacerbating that officer's feelings of unfairness and isolation in respect of the process.¹⁴²

Consultations claim a straightforward allegation of simple assault would take four to five months '*at an absolute minimum*' to determine. Many 'use of force' allegations - which dominate complaints against police - take longer to conclude. Instead of a common year or more of stress to answer for a 'reprimand' for example, retraining in situational response techniques, an anger management course, and a performance improvement undertaking with the subject officer's supervisor would cost less and achieve more.

Like the Service Delivery Performance Commission review in 2008,¹⁴³ this Review is advised that the disciplinary hearing process takes *one to three years* to reach finalisation stage.

Many matters at disciplinary hearings taking the time and resources of the system could be dealt with *on the papers*, years earlier and include more effective remedial intervention (such as rehabilitative measures, retraining, counselling) and individual performance accountability processes.

Queensland's police complaints, discipline and misconduct system represents an outdated orthodoxy of discipline and punishment which evidence-based assessment has since proven is less effective in promoting ethical health and high standards of conduct than remedial and other progressive management measures.

Despite attempts to recast the objective for the complaints system as a remedial one, the dominant paradigm is still punitive. One of the key issues that was raised across the 37 focus groups of 538 officers in 2010 was the concern that the discipline system was '*overly legalistic and formal in nature with limited avenues for early resolution*'. Better clarification was suggested for what 'managerial guidance' meant and the purpose of it because '*it is currently considered a form of sanction*'!¹⁴⁴

Managerial guidance from Project Resolve and intentions to accelerate resolution and manage devolution under Project Verity need structural reform of the disciplinary framework in the first instance.

The policy objective for devolution was to effect quicker remedial responses to complaints through police management taking responsibility. But that responsibility was still locked in the 'police investigating police' structure and processes instead of becoming 'police managing police'.

This is the missing piece for effective implementation of the devolution policy.

¹⁴² QPUE Submission to the Independent Review Panel, p. 4.

¹⁴³ Service Delivery and Performance Commission, *Report on the service delivery and performance management review of the Queensland Police Service*, Queensland Government, 2008, p. 82.

¹⁴⁴ Focus Report, p. 11.

When police were devolved responsibility for dealing with complaints the complaints system required them to deal with it by investigating themselves, not by managing (remedying) themselves. This is why the public confidence focus has been on 'police investigating police'.

The CMC and the QPS entrench the 'police investigating police' debate further in their implementation of devolution by protracted concerns around the nature and extent of investigations and disciplinary punishment. During this Review's consultations, one experienced practitioner suggested that *'the CMC needs to take on the responsibility to say to the QPS, 'we don't like it but you are responsible''*.

The following redesign of the police complaints, discipline and misconduct framework is suggested to support the aims of the devolution policy, respond to police investigating police concerns, and support the organisation and its police in addressing unacceptable conduct according to evidence-based contemporary people and capability management.

This is more than a renaming and consolidating exercise that streamlines assessments. It seeks to be *fit for purpose* and respond to the needs of all stakeholders. It fundamentally aligns and critically, supports, the devolution policy and capacity building ethos whilst maintaining public confidence in a system that manages risks through appropriately scaled oversight, and when risk tolerances are breached it gives external independent capacity to redress the breach and protect the organisation, and the community it serves. The remedial/rehabilitative intervention program should be risks and outcomes driven (dynamic) and not process-driven (redundant). Both remedial approaches for Local Management Resolution and for Category 2 Misconduct Intervention contain an exit trigger to the punitive stream as the *last resort* option.

The structural change in how complaints are dealt with in option one connects the devolution policy with a framework for police managing police and disconnects the debate from 'police investigating police'.

The second option in Table 3 is offered as a short term intermediate solution that takes into account the timeframes that are involved in making substantive legislative and associated administrative change; as well as the imperative for a quality performance management framework to be implemented throughout the QPS (see more on performance management at pp. 68-70 below), but recognises that the current system is in widely-agreed need for improvements in processes and outcomes.

Table 2: A new Police Complaints and Professional Standards Model:

TYPE OF COMPLAINTS, MATTERS, OR INFORMATION ¹	Category 1 - Serious Misconduct Review	Category 2 - Misconduct Intervention	Local Management Resolution
ALLEGED CONDUCT (RISKS)	Most serious types of alleged misconduct Currently, official misconduct and Category A police misconduct	Other misconduct Currently, Category B police misconduct	Currently breaches of discipline (not misconduct); and Client service complaints
AGENCY RESPONSIBLE	CMC, may devolve to the QPS in accordance with s.34 principles	QPS	QPS
RESPONSE (TREATMENTS)	(CMC oversight role, if matter devolved to QPS) <i>Investigations and oversight as per official misconduct currently, but expedited processes available through system improvements such as agreed facts, show cause on the papers (pp. 75-80). Plus, new adjudicative powers and right to appeal to QCAT(see pp59-66)</i> If substantiated (or evidence of lesser but still unacceptable conduct) but result is not termination, <i>Managerial Action Plan/performance improvement</i> to be instituted by QPS in respect of officer. CMC have audit power over classes of MAP for capacity building purposes.	(CMC oversight role) see new powers at pp. 59-66. <u>Formal Intervention:</u> If there is a reasonable suspicion that the complaint involves conduct that would provide a basis for the highest range of sanctions (demotion or dismissal), then the matter is subject to a formal investigation process (but improvements in expedited processes are available such as agreed facts, show cause on papers, disciplinary hearing by exception only before second stage of remedial intervention. <u>Remedial Intervention:</u> Other complaints are dealt with by way of remedial intervention and review, including quality performance management in professional development and conduct improvement and Managerial Action Plans. If the ESC so determines or the complaints history indicates unacceptable conduct improvement, show cause for sanctioning, and upscale performance improvement plan, or show cause for termination.	(No CMC oversight role) Not punitive, remedial only. May involve formal conduct improvement process as per Remedial Intervention. If three complaints substantiated within 12 months, refer to the ESC for consideration of misconduct intervention on a show cause basis.
Implement restorative justice principles to better respond to the legitimate needs of the Complainants, e.g. timely apology ¹⁴⁵ or acknowledgement, restitution.			
Requires quality performance management framework and accountabilities. (see also pp. 68-71) Also, supported by ongoing prevention and proactive identification measures in addition to a complaints process (including complaints history and at risk environment profiling) (see also pp. 84-86, 97-99, 119-123, 100-102)			

¹Sources of information include media reports, statistical and trend analysis profiling identifying a pattern of unacceptable conduct.

²Remedial Intervention is a management response and does not require a complaint to be substantiated, unless the matter moves to a punitive option under Formal Intervention and show cause process.

¹⁴⁵ CMC Report recommended civil liability protection.

Table 3:

**Intermediate Option towards
a new Police Complaints and Professional Standards Model**

less serious conduct

↔

more serious conduct

Local Management Resolution	Police misconduct ¹		Official misconduct
	Category B	Category A	
Current Client Service Complaints Current Breach of Discipline	as per current- see Table 1, p. 52.	As per current - see Table 1,p. 52.	As per current- see Table 1, p. 52.
Not punitive, remedial only. May involve formal conduct improvement process as per Remedial Intervention for new Category 2 (current Category B police misconduct). If three substantiated complaints within 12 months, refer to the ESC for disciplinary show cause.	As per new model suggestions for Category 2 Misconduct Intervention matters in Table 2, p. 57.	As per current, plus new oversight powers pp. 59-66.	As per current, plus new oversight powers pp. 59-66.

However, the disadvantage of a second formal option on an intermediate basis is the risk that if a lengthy lead time is taken in implementing the intermediate, then that may undermine momentum for change through-

- reform fatigue;
- delay occasioned by planning around imminent second changes;
- change in executive and/or political will, abandoning the intent to move to the new model after the intermediate;
- change avoiders and change resisters gaining a dominant voice when things improve at the intermediate point; or
- the program message (that the intermediate is only the first step in change) failing to reach stakeholders and they become cynical as expectations for a more advanced model are not met.

For these reasons, this Review recommends the new model proposed at Table 2 above be implemented (if even in planned stages e.g. new oversight powers and Local Management Resolution in a phase one) with a focus on the end goal of the new system, without a formal move to roll out an intermediate option.

RECOMMENDATION 8:

It is recommended that a new Police Complaints and Professional Standards Model (as summarised in Table 2) be approved, and include-

- a) simplifying the typology of conduct from five to three categories (including removing the definition confusion concerning 'misconduct');
- b) focusing devolution on responsibility for managing conduct improvement in the *first* instance by way of remedial intervention or local management resolution for all matters that do not indicate a sanction of dismissal or demotion, but with the flexibility to opt in a punitive element in specified circumstances;

- c) investigating and sanctioning when required by expedited procedures such as use of agreed facts and a show cause process on the papers, (with disciplinary hearings *only* in exceptional circumstances where the evidence is so complex or contested as to justify an oral hearing procedure); and
- d) actioning restorative justice principles as appropriate.

Suggestions for changes to the oversight role and powers are articulated in more detail below, and are framed in terms of the current system typology to enable implementation as soon as practicable in a phase one of reform under either the new model or intermediate options above.

5.1.2 Oversight role

An extension of the legislative power of monitoring as recommended by the CMC to all police misconduct matters¹⁴⁶ to the same standard as its powers in respect of official misconduct would be a further brake on the devolution policy for police taking responsibility for *managing* police because-

- it would empower the CMC to direct the resources and priorities of another agency, QPS, in circumstances that were not sufficiently exceptional (unlike official misconduct);
- it would be fundamentally inconsistent with the '*primary responsibility*' given to the QPS under the *Crime and Misconduct Act 2001* to deal with police misconduct (and care would have to be taken in formulating the direction otherwise it could impact on the independence of the decision-maker if the direction was perceived to be indicating the only decision acceptable to the CMC); and
- it would keep the focus of finite time and resources on the punitive side of the system.

The CMC already has powers under section 47 of the *Crime and Misconduct Act 2001* to intervene in misconduct matters, including the power to assume responsibility for the investigation, which it rarely uses.

The case study in the CMC Report *Setting the Standard* is used to indicate QPS failure to properly investigate a matter, and therefore the need for the additional power. The QPS counters that the matter cited had been assessed as an official misconduct matter and an investigation direction could have been, but was not, made before the CMC assumed responsibility for the investigation. The QPS advises that the CMC's investigation also unsubstantiated the allegation in any event.

The CMC explains that a continual utilisation of the power to assume responsibility is not an effective way of ensuring public confidence in the police discipline system in the longer term, particularly when with real time monitoring a simple step could quickly remedy the concern, and nor is it consistent with the CMC's capacity building responsibility. The other reason the CMC cites in favour of the *recommendation 4* proposal in the *Setting the*

¹⁴⁶ CMC Report, Recommendation 4, p.66.

Standard report is that it would provide indirectly the CMC with a new jurisdiction to take a matter in point to the QCAT.

However, another common issue raised during consultations in this Review was the claim that the CMC's monitoring role was one of the factors that influenced the 'overcooking' of QPS investigations because of the investigating officers' fears of being criticised, or worse, that they become the subject of a misconduct investigation themselves. Accordingly, investigating officers '*tend to go down every rabbithole*' and amass *thousands* of pages of (recorded and sworn) evidence for matters that were not serious misconduct. Not untypically, *hundreds* of pages of decision by prescribed officers follow. The work involved in investigations and decisions is seriously disproportionate and a major chokepoint in the system. (At the least, training and support to prescribed officers in writing more concise reasons for decisions and still affording natural justice is required, see Recommendation 23, pp. 89).)

It is not clear the extent to which relationship and trust difficulties may be impacting on the QPS investigating officers in this, or on the CMC's suggestion that it requires a directional power instead of an advisory one.

The CMC's current initiatives in its monitoring role will improve its effectiveness, and assist timeliness. In particular, the move away from desk-top 'after the event' reviews to closer initial monitoring and interim reporting on more serious matters is supported by this Review and constructive engagement with the QPS in clarifying procedures and expectations will assist. An evidence and risk-based approach to the use of its audit power - and sharing the detail of the outcomes of the audits with the QPS will build capacity in the QPS and deliver more effective oversight.

This Review recommends a better alternative to the *recommendation 4* proposal (in the CMC Report, *Setting the Standard*), in consideration of -

- a better focus on 'police managing police' in a devolved remedial system;
- the gap in real outcomes (a different sanction or a different result in substantiation) between the current advisory guidelines and the ability to direct investigations are likely to be negligible in practice - a new function *type* would be better, not an extension of the same type;
- directly addressing the jurisdictional concerns regarding QCAT;
- a costs/benefits perspective that weighs -
 - the experience to date where the monitoring role does not effect a substantive change in results anyway - either in individual sanction results or overall where substantiation rates were approximately the same before devolution, with
 - reducing pressures on investigators and prescribed officers and corresponding burdens on *timeliness*, and
 - reducing *duplication* of resources by the CMC needing to 'shadow'/monitor, and in reviews, and in the QPS preparing additional reports; and

- promoting public confidence in the integrity of the system and its outcomes with a better functional oversight capacity (i.e. decide vs monitor).

Tables 4 and 5 reflect a broader reconsideration of the CMC's oversight capacity and influence on the police complaints, discipline and misconduct system.

Table 4:

CMC oversight role with respect to police misconduct:

Current	CMC proposal
monitoring - <ul style="list-style-type: none"> • advisory guidelines in investigations • review or audit (specific or class of complaints) • assume responsibility for investigation (s. 47) 	as per current, plus a power to direct QPS to report on investigations in the way and at times directed, and to direct further investigation. (similar to powers for official misconduct)
New Model- <i>Recommended</i>	
<ul style="list-style-type: none"> • current (s.47) monitoring powers for Category A police misconduct matters only • for Category B matters, advisory guidelines and review or audit as per current. (For new model in Table 2, then in respect of Formal Intervention matters only.) • no assume responsibility of investigation for Category B police misconduct matters. • new CMC power to substitute a different disciplinary decision (an adjudicative power) in respect of Category A and B police misconduct. Review (on the papers) unless CMC elects to assume responsibility for investigation also (in respect of the current Category A matters as extended by Recommendation 10 of this Report). • new CMC right of appeal to the QCAT in respect of police misconduct. 	

NB: *References to Categories A and B in Table 4 above, should be read as including the changes to categories as a consequence of Recommendation 10 (p.68) if approved. That is, the indication of categories in the new model recommended above includes the expansion of Category A matters as recommended in Recommendation 10.*

Table 5:

CMC oversight role with respect to official misconduct:

Current	New Model- <i>Recommended</i>
monitoring - <ul style="list-style-type: none"> • advisory guidelines in investigations • review or audit (specific or class of complaints) • direct QPS to report on investigations in the way and at times directed, and to direct further investigation • assume responsibility for investigation (s. 48) 	<ul style="list-style-type: none"> • current (s.48) monitoring powers • new CMC power to substitute a different disciplinary decision (an adjudicative power). Review (on the papers) unless CMC elects to assume responsibility for investigation also. • current CMC right of appeal to QCAT

Under the new model, it is proposed that the CMC would gain two 'new' oversight powers, and the CMC would no longer have the power to assume responsibility for investigation of new Category 2 matters (current Category B police misconduct less the matters in Recommendation 10 at p. 68), which it rarely uses.

Firstly, the new model seeks to ensure that there is a clear power for the CMC to apply to the QCAT for a review of a disciplinary decision or finding in respect of both the new Category 1 and 2 matters (currently police misconduct and official misconduct).¹⁴⁷

Secondly, as noted in Tables 4 and 5 in respect of the new Category 1 and 2 matters (currently police misconduct and official misconduct), the CMC would have a new power to *make* a disciplinary decision in substitution for a disciplinary decision made by the QPS decision-maker (i.e. from a finalised disciplinary proceeding where natural justice principles have been applied).

The exercise of this new power should be available only within a specified timeframe commencing on a clear event. Specifically, the legislation should provide that the CMC may give notice that it has made a substituted decision within 14 days of receiving notice of the original decision. This is consistent with the timeframe provided in section 219G of the *Crime and Misconduct Act 2001* where a review application to the QCAT must be made within 14 days of the effective notice of the decision or finding. It is also consistent with the 14 days within receipt of the investigation report that a prescribed officer is to determine liability and indicate sanctions as recommended in Tables 6 and 7, pp.76, 78).

The same rights of appeal would apply to the QCAT in respect of any substituted disciplinary decision under the new power, and would include a right of appeal for the QPS as employer. The legislation should provide that the power to make a decision may be made by the Commission with the possible delegation of the adjudicative power available to the Chairperson or the Assistant Commissioner, Misconduct. This affords the CMC flexibility if necessary, to make a decision within the prescribed timeframe but respects the significance of the power.

Upon the making of a substituted disciplinary decision by the CMC, any right to review the original decision is extinguished. In making a substituted decision, the CMC is not to conduct a re-run of the disciplinary proceedings but is to be taken to stand in the same shoes as the QPS decision-maker in considering the matter on the same papers and evidence available to the original decision-maker so that the nature and extent of natural justice afforded already by the original decision-maker is preserved. The legislation should also provide that if the matter had been subject to a disciplinary hearing (which under the new model would only be in the most exceptional of circumstances, see Table 2, p. 57), then the power of substituted decision would not be available to the CMC (as it had not presided over the oral hearing and the evidence considered therein). In that event, the CMC may consider its review rights to the QCAT in the alternative.

Like the QCAT, the CMC is not a party to the employment contract of the officer. The nature of this adjudicative power is a summary jurisdiction in

¹⁴⁷ Section 219BA of the *Crime and Misconduct Act 2001* defines a 'reviewable decision' currently to include a finding of misconduct under s.7.4(2A)(b) or s. 7A.5(1)(b) of the *Police Service Administration Act 1990*.

review of a decision on the papers, and the appropriate legislative amendments would need to be made.

The power to adjudicate is favoured by academic commentators familiar with Queensland's police complaints, discipline and misconduct system,

In terms of powers, the CJC lacked the full armoury expected of an advanced integrity commission. Successive governments refused to give it phone-tapping powers, despite the fact that this is a standard tool in high-end law enforcement. More significantly, the CJC lacked any adjudicative powers, as does the CMC. Disciplinary action can only be recommended to the Police Commissioner and criminal matters referred to the public prosecutor, although the CMC can prosecute intermediate matters in a misconduct tribunal. With no real adjudicative powers the CMC often finds itself impotently expressing a 'not happy' response over final decisions and sanctions administered by the police, tribunals or courts.¹⁴⁸

Even though it is not a standard feature of anticorruption commissions in Australia to take disciplinary action against public officials when they believe that disciplinary action is warranted,

The issue has generated surprisingly little debate, but it lies behind the widespread disillusionment when individuals found by a commission to have engaged in misconduct are 'let off' with little or no consequence... The problem might in part be solved by granting commissions summary jurisdiction over disciplinary matters, including the power to fine, demote and sack public servants... subject to an appeals process.¹⁴⁹

The contemplation of this Review is that the practical incidence for use of the adjudicative power would be low and in circumstances where the CMC considers that the evidence and findings are clear, and that in its *civilian* oversight capacity, it adjudges that the finding or sanction was inadequate. However, it affords a quick and less expensive determination than QCAT which should be reserved for the more complex matters or those requiring a more arm's length assessment.

This is an effective check and balance in implementation of the devolution policy. Matters are devolved under legislation and by assessment decisions. Conceptually, this power gives the civilian oversight body capacity to '*call the matter in*' and determine it according to an external civilian assessment (subject to review rights and protections). In terms of resourcing (minimises duplication of effort), time (saves in further or re-investigation) and impact (determinative), it is a much more effective measure than increasing

¹⁴⁸ Prenzler, T., 'An Assessment of Reform in Politics, Criminal Justice and the police in Post-Fitzgerald Queensland', *Griffith Law Review*, 18(3), 2009, pp. 587.

¹⁴⁹ Prenzler and Faulkner, *op. cit.*, p. 257.

monitoring powers or assuming responsibility for investigations of the less serious current Category B matters.¹⁵⁰

This Review considers that it is fundamentally inconsistent with the simple, timely, effective and remedial intent and structure of the new Police Complaints and Professional Standards Model (Table 2) for the new Category 2 matters (current Category B police misconduct) to remain subject to the CMC power to assume responsibility of investigations. The oversight capacity would be stronger and more effective with the new oversight powers together with the range of other initiatives in this report (such as in Joint Assessments and early decision-making on expectations of investigations) than in maintaining the prospect, delay, and duplication of a re-investigation.

The new power for the CMC to substitute a disciplinary decision provides an additional safeguard for community confidence in the police complaints, discipline and misconduct system because of its oversight capacity to *do* more than make a recommendation back to the QPS decision-maker. Other oversight bodies in jurisdictions with '*mature form in police integrity agencies*'¹⁵¹ such as in Northern Ireland, England and Wales, make recommendations which the police organisations are obliged to follow. This Review considers it preferable to attain the same result more directly and more transparently. Public confidence is likely to favour a power that enables a timely and cost effective *decision* in external review by the primary civilian oversight body, than a power for making *recommendations* back to the QPS (even where there is a duty to comply with thus the same result, albeit likely more slowly).

Public confidence is also supported by this power affording a more cost and time effective approach in dealing with the (alleged) misconduct than the other alternative of referring the case on for a more formal review and associated additional procedures necessarily involved in a review by the QCAT.

The legislative amendments for the proposed power for the CMC to substitute its own disciplinary decision should make it clear that a 'disciplinary decision' in respect of this power does not include a decision not to commence a disciplinary proceeding. This is important because if the CMC was to substitute a decision *to commence* disciplinary proceedings, it would risk the contention that the decision was effectively a direction on the decision-maker improperly affecting the independence of the decision-maker in the consequential proceedings brought. This Review holds these concerns despite powers in other jurisdictions to direct that disciplinary proceedings be brought. Also, in practice, the power for the CMC to substitute a decision that disciplinary proceedings be brought would gain little. A genuine decision-maker who was not satisfied of the threshold of evidence required to bring disciplinary proceedings in the first instance is not likely to be any more satisfied of the evidence by going through the motions of a formal disciplinary proceeding.

¹⁵⁰ Excluding those matters recommended for inclusion in Category A matters on p. 68.

¹⁵¹ Prenzler and Faulkner, *op. cit.* p. 259.

However, any dissatisfaction by the CMC concerning a QPS decision not to commence disciplinary proceedings is better provided for in legislation supporting the review right to the QCAT by ensuring that the CMC has the right to seek review by QCAT at any stage. That is, before or after disciplinary proceedings in respect of matters currently described as police misconduct¹⁵² and *includes* a decision not to commence a disciplinary proceeding.

Both suggested new powers sophisticate the oversight model for Queensland from one *'looking over the shoulder'* of the QPS with the *'impotent'* option to sound a *'not happy'* response¹⁵³ to one that says, *'you get on with it and we won't slow you down or duplicate your effort, but if the outcome is wrong we can call it and fix it'*.

Both powers are recommended to enable a case specific assessment by the CMC of the appropriate power to apply in the circumstances.

These suggested powers would have avoided the controversy concerning the recent outcome of disciplinary matters in the Palm Island investigations matter, and likely would have finalised processes significantly earlier.

This Review considers that on a cost/benefit consideration, these new powers are superior on the key measures of simplicity (time), effectiveness (cost and impact), transparency (simple and open to review), and strength (more direct consequences) in managing the risk of adverse consequences arising from inadequately treated misconduct.

It is clearly beyond the scope of this Review to consider whether the new model for oversight powers (in Tables 4 and 5) should pertain to public sector agencies other than the QPS, but such may be a matter for further consideration by government.

RECOMMENDATION 9:

It is recommended that in lieu of any additional monitoring powers, legislation be amended to provide for-

- a) a new adjudicative power for the CMC to substitute a different disciplinary decision for new Category 1 and 2 matters (currently described as police misconduct and official misconduct)-

including where the original QPS decision-maker decided-

- to impose a sanction the CMC considers inadequate; or
- the allegation did not amount to misconduct; or
- the allegation was not proved, but

¹⁵² See current review rights in Part 2 of the *Crime and Misconduct Act 2001*, (and related s. 7.4 and s. 7.5 of the *Police Service Administration Act 1990*.)

¹⁵³ Prenzler, T., 'An Assessment of Reform in Politics, Criminal Justice and the police in Post-Fitzgerald Queensland', *Griffith Law Review*, 18(3), 2009, pp. 587.

excluding those matters the subject of an oral disciplinary hearing procedure; or where a decision was made not to commence disciplinary proceedings with respect to a police misconduct allegation.

- b) the extinguishment of any right of review of the original QPS disciplinary decision upon the notice of a substituted decision by the CMC but those same rights of appeal for the subject officer to QCAT are preserved in respect of the substituted disciplinary decision made by the CMC, and would include a right of appeal to the QCAT for the QPS as employer.
- c) the possible delegation of the adjudicative power to the Chairperson of the CMC, or the Assistant Commissioner, Misconduct, only.
- d) a right of appeal for the CMC to QCAT for the new Category 2 and those Category 1 matters currently described as police misconduct, including ensuring a right of review for the CMC to QCAT of a decision to not commence a disciplinary proceeding with respect to a police misconduct allegation.
- e) specified timeframes for the new oversight powers, being-
 - (i) for the adjudicative power: the CMC's notice to the QPS and the subject officer must be provided within 14 days of receiving notice of a decision of disciplinary proceedings under the *Police Service Administration Act 1990*; and
 - (ii) for the QCAT review power: within 14 days of receiving notice of the decision.
- f) no power to assume responsibility for investigations (under section 47 of the *Crime and Misconduct Act 2001*) in respect of new Category 2 matters (currently described as Category B police misconduct matters but less those matters specified in an expanded section 40 direction under Recommendation 10 below).

This Review also recommends that the misconduct matters received by the QPS referred to as Category A matters (which are included in the new Category 1 proposed) be widened to include-

- unauthorised disclosure of confidential police information to a person involved or perceived to be involved in criminal activity and/or who is a member of an outlaw motorcycle gang or other criminal group;

This widens the existing scope in a post-Operations Capri and Tesco context.

- a complaint involving a death in custody;

This is a new reference for Category A management. Under the *Coroners Act 2003*, the State Coroner is responsible for investigating and holding inquests into such deaths. Although deaths in police custody do not necessarily involve a suspicion of official misconduct or police misconduct, it is prudent risk management in view of potentially serious consequences and in promoting public confidence for the matter to be notified to the CMC without delay before further action, under section 40 of the *Crime and Misconduct Act 2001*. This caution is also consistent with current operational arrangements that treat a police-related death as a homicide until otherwise determined. (See also section 5.3.2 at p. 87).

- a complaint involving a serious injury in custody that is life-threatening;

Such matters should be dealt with in the same Category A way as a death in police custody.

- a complaint involving an Indigenous person concerning an allegation of assault whilst in custody;

This widens the similar reference in the existing section 40 Directions (Category A matters) by including not just an assault, but an *allegation* of an assault.¹⁵⁴

- offence of taking reprisal under the *Public Interest Disclosure Act 2010*;

This reflects legislative developments concerning (whistleblowers and) public interest disclosures, and joins the victimisation and injury or detriment to witness provisions already in the section 40 Directions.

- a complaint concerning a police officer who has a significant complaints history; and

The meaning of a 'significant complaints history' should be defined in the explanatory note to the section 40 Directions.

- a complaint that a police officer or QPS staff member investigating an alleged Category A misconduct complaint, has improperly failed to carry out their duties in that investigation.¹⁵⁵

¹⁵⁴ The current Category A includes 'A complaint involving an Indigenous complainant or alleged victim concerning assaults in custody or failure to provide medical treatment whilst in custody.'

¹⁵⁵ See similar precedent in then NSW Category 1 class or kind agreement, (s.130 *Police Act 1990*), quoted in Parliament of NSW, *Report on Ten Year Review of the Police Oversight System in NSW*, p. 5.

By limiting this reference to alleged Category A misconduct complaints, the reference responds to risk and timeliness. The inclusion of QPS staff member in this reference will coincide with the introduction of a Staff Member Investigation Unit within the ESC.

Such amendments will support CMC decision-making in the public interest for the independent oversight role in accordance with section 34 principles in the *Crime and Misconduct Act 2001*. All complaints are to be assessed on their merits and the new Joint Assessment process in Recommendation 13, p. 73) provides further support for dealing with Category A matters.

The current Category A matters (section 40 directions) appear in full at Appendix D.

RECOMMENDATION 10:

It is recommended that Category A misconduct matters be widened to include-

- unauthorised disclosure of confidential police information to a person involved or perceived to be involved in criminal activity and/or who is a member of an outlaw motorcycle gang or other criminal group;
- a complaint involving a death in custody;
- a complaint involving a serious injury in custody that is life-threatening;
- a complaint involving an Indigenous person concerning an allegation of assault whilst in custody;
- offence of taking reprisal under the *Public Interest Disclosure Act 2010*;
- a complaint concerning a police officer who has a significant complaints history (to be defined by explanatory note); and
- a complaint that a police officer or QPS staff member investigating an alleged Category A misconduct complaint, has improperly failed to carry out their duties in that investigation.

5.1.3 Quality performance management

Operational Performance Reviews (OPR) were introduced in August 2001 as an active executive review meeting format where '*managers must have an in-depth knowledge of all areas for which they are responsible to fully engage*' in the discussion and the process.

A comprehensive suite of statistical data, qualitative data and other observation data is used to generate rigorous discussion centred upon the effectiveness of strategies, learning from past experiences and anticipated forthcoming issues. Meetings are framed around eight key priorities which include operational and client service issues, strategic issues and a range of corporate performance issues.¹⁵⁶

Police complaints, discipline and misconduct matters were added to the OPR format in 2002.

¹⁵⁶ QPS Annual Report, 2009-10, p. 173.

However, the current QPS framework for individual performance management, the Performance Planning and Assessment (PPA) process, has been largely unchanged since it was introduced in the early 1990s as part of the post-Fitzgerald reforms. Over time, the system has withered to little more than an administrative motion for members seeking pay point progression.

The Focus Groups in 2010 confirmed, as did this Review's consultations, that supervisors were *'reluctant to submit negative comments on subordinates as they generally did not want to place a financial detriment on them'*.¹⁵⁷ This problem is then compounded when an officer seeks the supervisor's endorsement for promotion. According to this Review's consultations, the supervisors can feel compromised because they would have no credibility in providing a fair assessment at that point if they have performance concerns because they had not raised them previously in the PPAs linked to paypoint progressions.

As the 2007 review of the Victorian system noted in expressing concern at attaching a monetary incentive to a 'one off' annual assessment process,

In most other organisations, performance assessment is a continuous and cyclical process involving ongoing dialogue between staff members and supervisors so that weaknesses and successes are recognised when they arise and can be dealt with through training, direction or reward and recognition in a timely way.¹⁵⁸

There is the risk that if work performance concerns are not addressed, they can result in unacceptable behaviours into the discipline system.

In 2008, the (former) Service Delivery and Performance Commission recommended that the QPS develop and implement,

... a revised performance planning and assessment system which at a minimum sets performance expectations, recognises good performance, provides guidance where improvement is required and opportunities for development and links to the Operational Performance Review process for relevant managers.¹⁵⁹

This Review agrees, and notes that the QPS has engaged an implementation project team that has been developing options for consultation and approval and that their efforts are at an advanced stage, with finalisation and commencement of implementation anticipated for June 2011.

The need for a quality well-implemented performance management framework is a critical component of a simple, effective, transparent and strong police complaints system. The framework supports a remedial focus on the developmental aspect of performance management. This focus is on

¹⁵⁷ Focus Group Report, p. 15.

¹⁵⁸ Office of Police Integrity (2007), op. cit., p. 27, and quoted in Focus Group Report.

¹⁵⁹ SDPC (2008), op. cit.

acceptable standards of conduct as a police officer and, where necessary, planning, developing and reviewing conduct improvement.

A quality performance management system that provides for early intervention for performance and behaviours, managerial action planning (training and other workforce planning) and individual conduct improvement planning and review is key in managing a transition from a punitive to a remedial focus in the police complaints system and its achievement needs to be a high priority.

RECOMMENDATION 11:

It is recommended that the current Performance Planning and Assessment (PPA) process-

- a) be delinked from paypoint progression in the QPS; and
- b) be replaced as a matter of priority by a quality strategic performance management system as recommended by the (former) Service Delivery and Performance Commission (2008, at recommendation 40), and with its design also accounting for use in remedial and early intervention processes.

5.2 Timeliness

On 20 September 2009, 5 SERT officers ran around a bus naked whilst off duty. The next day all officers involved were interviewed and took full responsibility for their actions. An intended plea of guilty to any discipline charge arising out of their conduct was promptly communicated to the QPS. The officers were stood down on 22 September 2009. Incredibly, the matter was not finalised until 7 September 2010, almost a year later. The stand down orders against each of those officers remained in place and were not removed until the matter was resolved.¹⁶⁰

Grossly excessive timeframes are not a new problem and have been the subject of numerous reports. Nor are they unique to the Queensland police service.

Timeliness in the police complaints system is impacted on at many levels and by a range of factors. A consistent dedication in this Review has been to understand the sources of delay and obstruction and what measures could make a difference where others have failed. Various recommendations throughout this report attend to a priority in timeliness.

The five additional strategies supported below that should make a critical difference are-

- performance accountability for timeframes;
- joint assessment;

¹⁶⁰ Queensland Police Union of Employees, Submission to the Independent Review Panel, April 2011, p. 4.

- benchmarked timeframes;
- accelerated and flexible disciplinary process; and
- Professional Practice Managers.

5.2.1 'What gets measured, gets done'

It is potent in its simplicity. If timeliness matters, then determine the standard, measure it, and attach consequences. Like an effective discipline system, the best consequences are those that are framed around incentives and which provide support to address shortcomings.

The executive performance agreements for both the Commissioner of Police and the Chairperson of the CMC should include, if they do not already, a performance target that requires measurable improvement in the timeliness of their respective responsibilities in the police complaints, discipline and misconduct system. As a core business performance requirement, these targets should be shared and measured among the executive according to their roles, and then throughout the organisation. A quality performance management system provides a support structure for individual performance, and managing timeliness in the complaints system is an additional reason for the new QPS performance management framework to be implemented as a priority.

If executives and officers are directly accountable for timeliness in the complaints system as an organisational objective, then priority in resourcing and other management decisions should follow.

RECOMMENDATION 12:

It is recommended that the executive performance agreements for the chief executive officers and their executives in the QPS and the CMC include a performance measure for meeting key benchmarked timeframes in the police complaints system.

5.2.2 Joint Assessment

On average over the last five years, the CMC takes up to four weeks to make an initial assessment on 92% of complaints, of which the majority are then referred to the QPS for investigation.¹⁶¹ After (and in some instances before and after) the CMC assessment process, the ESC also needs to conduct an assessment process before allocating the complaint to be dealt with.

That first month or more to an assessment process that achieves the allocation of the majority of matters to the subject agency is a significant cost to the system in offering a cold evidence trail, lost opportunities for early admissions, restorative justice, remedial/rehabilitative responses and managing learning behaviours.

¹⁶¹ CMC Annual Report 2009-10, Table 3, p. 21.

The initial assessment should be a triage exercise balanced by the provision of enough need to know information.

It is recommended that the CMC and the QPS meet as regularly as necessary but at least once a week to undertake a *Joint Assessment* process in pursuance of the section 34 principle of *cooperation* and with a common purpose focussed on the *public interest* principle.

The *Joint Assessment* would include a subset of the new Category 1 matters (Table 2) being the current Category A matters (as extended by Recommendation 10) and those complaints received by the CMC from the public (CMC's Category 1 and 2) that the CMC considers suitable for either joint investigation or referral to QPS to deal with subject to a review by the CMC. The CMC estimates on the basis of 2010 statistics that this would involve approximately seven matters per week for *Joint Assessment*.¹⁶²

The *Joint Assessment* would exclude necessarily covert matters. It is also not intended that the CMC be unduly influenced by any external body, including the QPS, in determining which matters it will investigate.

A joint tasking would facilitate more timely and better informed initial assessments both because -

- a cooperative effort can provide a better basic brief of evidence that includes for example available CCTV material, employment history of subject officer - for every complaint *as a matter of procedure*; and
- the meeting attendees would be senior with deliberative and decision-making authority to work through issues together then and there to minimise out-of meeting follow up and correspondence. Joint assessment decisions should be signed off by both representatives and entered on the IT management system at the meeting for immediate record and transmission of referral decisions.

Joint Assessment can tag matters by exception for further preliminary evidence but both organisations should better understand then why that call has been made and can share in the responsibility to bring the matter back to the *Joint Assessment* according to agreed timeframes. The joint assessment opportunity also facilitates a ready and informed discussion about which matters may need a joint investigation, and critically expectations on the standard of investigation can be settled at the outset. This would help significantly in seeking to avoid the serious chokepoint of "overcooking investigations" and in circumstances where the additional investigative effort would have no bearing on any additional result or sanction in any event.

Consultations during the Review grew support for the proposal because many actors in the system agreed that if the front end of the system could be improved in these respects, the benefits would multiply as they flow through to the rest of the system.

¹⁶² NB. There may be a slight increase per week on account of a broader scope of Category A matters proposed in Recommendation 10.

Membership of *Joint Assessment* should be senior with decision-making authority and should include at least the Director, Misconduct (CMC) and Chief Superintendent, ESC (QPS).

The QPS is likely to also include the Superintendent, Internal Investigations Branch (IIB); Inspector, State Coordinator (heads up the Complaints Management Team); Internal Witness Support representative (early intervention & response). However, membership should be limited to the key decision-makers who need to be fully briefed so numbers should be limited to no more than four members for each agency unless agreed by exception.

The terms of reference for the *Joint Assessment* should include an agenda in respect of all matters to be assessed that covers the following:

- The nature and seriousness of the complaint.
- The expectations of the complainant, if known.
- What information/evidence is there to support the complaint? This would include complainants' statements/versions(if available), profiles of both the subject officer and complainant, CCTV, witness versions and any forensic evidence.
- The classification of the alleged conduct.
- Are there public interest issues?
- What investigative strategies and resources should be adopted and allocated to the investigation?
- Which agency will take lead status?
- Should it be a joint investigation? (There is merit in more joint investigations of serious matters, even if only one member of the agency (that is not the lead agency) is allocated to the other during the carriage of that investigation.)
- Whether the CMC will review the investigation either 'before' or 'after' action is decided, or *preferably* 'during' the investigation.¹⁶³

Although the CMC has the ultimate decision-making authority in respect of the assessments, in the event that agreement on a matter of concern can not be reached at the Joint Assessment then the matter should be referred to the Assistant Commissioner, Misconduct Investigations (CMC) and the Assistant Commissioner, ESC (QPS) for further discussion in the first instance. (This is consistent with the recommended responsibilities for both these roles in the implementation phase, in chapter 7 (p. 128).

A summary of these key elements for the *Joint Assessment* appears at Appendix E.

RECOMMENDATION 13:

It is recommended that time savings be made at the initial assessment stage of complaints at the CMC through better information support for assessments and that a *Joint Assessment* process conducted in cooperation with the QPS as summarised in Appendix E, be approved.

¹⁶³ This is consistent with current CMC initiative to move away from reviews 'after'. (p. 60)

Benchmark timeframes

As a matter of principle, it is not clear why police officers in the QPS should be subject to a formal disciplinary process that usually takes months and years longer than the six months timeframe that is expected for civilian staff of the QPS, and the wider Queensland public sector.¹⁶⁴

As a matter of practice, there are significant differences involved. QPS investigations have to their advantage (over the general public sector) quality investigative capability in the availability of their officers, police powers, availability of recorded evidence (e.g. CCTV) and specialised professional standards unit, internal legal advice and processes. To its time disadvantage, is the formal disciplinary process including disciplinary hearings, additional obligations of reporting to the oversight body in respect of police misconduct as well as official misconduct matters, the investigative role the time taken in the various layers in chain of command communications. These considerations are subject of recommendations elsewhere in this report (such as Recommendations 8, 9, 13, 15, 18).

In most instances, timeframes should be benchmarked instead of imposing a mandatory timeframe. However, commitment to the benchmark needs to be supported, transparent and accountable. That commitment is dependent on the timeframes being reasonable and fair in affording a satisfactory process that prioritises the timeliness of its outcomes. Benchmarking in the police complaints system seeks to accommodate, by the provision of a 10-20 per cent tolerance, the timeliness of matters legitimately challenged by for example particularly complex investigations, criminal charges against the subject officer or otherwise inextricably interwoven with court processes. The 10-20 per cent allowance in benchmarking is not intended to accommodate inbuilt redundancies or inefficiencies in the system.

The joint annual report recommended in chapter 6 (p. 116) should account to the public for performance against the key benchmarked timeframes on an organisational basis annually. The ESC should monitor timeframe performance data to target areas that require additional support in meeting benchmarks. Executive and relevant individual performance plans (such as for Professional Practice Managers) should incorporate responsibility for meeting the timeframe guidelines.

The new police complaints model recommended in this Report proposes fundamental structural changes and orientation to the system which will have a significant positive impact on the ability of QPS and the CMC to manage benchmarked timeframes. For example, the current breach of discipline (not misconduct) matters under the *Police Service Administration Act 1990*, such as loss of police property, would be subject to a formal disciplinary hearing process under the current system. Under the new system that category of conduct (as well as the current Category B misconduct matters) would no longer require a formal disciplinary process (unless there was a trigger for it to

¹⁶⁴ Public Service Commission *Discipline Guidelines*, Queensland Government (2/11/09).

be transferred into more serious *Formal Intervention*, such as pattern in complaints history).

The other significant recommendation is for disciplinary hearings to be held only in exceptional circumstances which require complex case evidence to be tested in that forum. Disciplinary charges under *Formal Intervention* under the proposed model, or the current Category A and official misconduct matters should proceed 'on the papers' through a show cause process. The recommended benchmarked timeframes proposed for the CMC and the QPS for the show cause process, appear in Table 6.

The subject officer *need not* acknowledge the conduct or make any admissions before an indicative outcome is provided to the subject officer. The indicative outcome is a discounted sanction intended to encourage the subject officer to consider his or her position in that context. A precondition of admission before indicative outcome significantly dilutes the design intent of the procedure and is expressly not supported by this Review.

Operational timeframes and procedures within the CMC and the QPS should be revised to support the achievement of the agency-level benchmarks. For example, many of the benchmarked timeframes commence upon *receipt* of certain material. Internal processes need to be revised or developed to ensure that transmission of the material that triggers the commencement of timeframes, or is essential to the key activities, is expedited in each case. Internal processes should be subject to ongoing review and continuous improvement.

The basic brief of evidence should include subject officer's complaints history profile, and CCTV footage. Consultations indicated that the chain of command involved in formally seeking recorded evidence is responsible for additional delay and should be avoided by the making of a direct request from the ESC to the relevant officer at local level to action without first formally passing through the request to that officer's superiors. A courtesy copy of the request by email should be made contemporaneously with the direct request for evidence. Similarly, the evidence should be provided directly back to the ESC without delay and viewing by each chain of command above. The tasked officer can copy in superiors as may be required on despatch of the evidence to the ESC.

In addition to the complaints assessment phase, direct conveyance of requests for, and the provision of, evidence from and to the ESC should be permitted and include CMC's requests to the ESC for evidence or information in support of the CMC's functions.

Table 6: Proposed Timeframes for Serious Misconduct Review

Timeframe benchmarks	
For disciplinary action in response to - Category 1 - Serious Misconduct Review (currently CMC categories 1 and 2 and category A ¹ matters)	
1. Complainant contacted for further and better particulars where required (statement taken if appropriate), or by receipt of complaint made (see Recommendation 48, p. 118)	90% within 14 days of the complaint being first made to QPS or CMC
2. Basic information prepared to inform Joint Assessment decision on who is to deal with the matter, the level of inquiries expected and, if applicable, the level of CMC monitoring.*	85% within 14 days of the complaint being first made to QPS or CMC
3. If Category A ¹ matters are not subject to an assessment decision within that first 14 days of referral to the CMC, then the QPS can commence dealing with the matter (<i>new mandatory timeframe</i>)	Within 14 days of the complaint being provided to the CMC
4. If assessment decision indicates no further action required the complainant to be advised.	Within 7 days of the assessment decision the complainant to be advised
5. Subject officer advised of the complaint* and, on a realistic assessment of the facts, is provided with an <i>indicative outcome</i> (i.e. a specific sanction that may be discounted for early acceptance)	85% within 14 days of the complaint being first made to QPS or CMC.
<i>If the subject officer does not agree to accept the indicative outcome, or the matter requires further inquiries then-</i>	
6. Allocation of matter to investigating officer, conduct of investigation, and delivery of investigation report	80% within 90 days of the assessment decision ²
7. Where applicable, CMC review final report prior to QPS determining any action. ³	85% within 14 days of receipt of the investigation report and documentation
8. Determine liability for disciplinary action and indicative outcome or the range of indicative outcomes possible (i.e. sanctions, not discounted for early acceptance). Issue show cause notice.	85% within 14 days of receipt of the investigation report and documentation
9. Subject officer submits a response to show cause	Within a minimum of 14 days and maximum of 21 days ⁴ from the date of the show cause notice
10. Review all material, make a finding on allegations, decide disciplinary action, issue second show cause notice (if range of sanctions only was provided at 1st show cause stage)	85% within 14 days of show cause submission
11. Subject officer submits a response to second show cause regarding proposed sanction only.	Within 7 days of second show cause notice

All days are calendar days

¹References to Category A should be taken to include the additional matters proposed in Recommendation 10.

*Except those which require covert investigations.

²Other state jurisdictions set formal investigation timeframes at 60 days to complete, but with limited success. Queensland public service discipline guidelines benchmark 'within 3 months' (2009).

³ The CMC's move away from 'desk top' after the event review to closer initial monitoring and interim reporting on more serious matters is supported. See p. 60.

⁴NSW and Victoria provide 21 days for show cause response. Queensland public service discipline guidelines benchmark 'minimum period of 14 days' (2009).

** Step 11 does not apply if sanction particularised in first show cause notice.

The majority of Category A matters are investigated by the QPS, on a cost/benefits perspective a matter should not be held any longer than 14 days pending an initial assessment. Indicating this consequence to the timeframe will require the CMC to prioritise the Category A¹⁶⁵ matters of most concern to consider first. Section 40 Directions will need amendment to impose this timeframe saving.

Complaints can be received at QPS or at CMC. The Review was advised that complaints received by telephone at the CMC took approximately two weeks to transcribe and particularise allegations before the complaint was referred to the QPS for action in Category B and lesser categories. The Review considers that two weeks is disproportionate time for an essentially administrative task in respect of the lesser misconduct matters. Training and business processes may assist staff to determine the essence of the complaints and the matters of substance involved to expedite processing, failing which a reallocation of resources may be required internally. Two savings could occur, a new Category 2 currently Category B misconduct or less serious complaint need not have allegations specified before transferring to the QPS because these matters are the primary responsibility of the QPS. Secondly, the complainant should be asked to advise what outcome is being sought and where complainants are seeking an apology or acknowledgement then the complaint should be transferred to the QPS within 24 hours for the QPS to manage the outcomes in accordance with restorative justice notions and a timely remedial/rehabilitative response as may be appropriate. Drafting of allegations is unnecessary for that conduct category, more so in those circumstances.

The timeframes for the CMC and the QPS are different for new Category 2 matters (currently Category B misconduct) because the CMC is not involved in the initial assessment process.

Currently, the QPS does not report on benchmarked timeframes for the police discipline process. The CMC reports on timeframe benchmarks for its-

- assessment of 85 per cent of complaints within four weeks¹⁶⁶; and
- investigation of 80 per cent of misconduct matters completed within twelve months.¹⁶⁷

The benchmarks proposed in Tables 6 and 7 represent a significant increase in timely outcomes that are more consistent with the benchmarking in reforms in police services of other Australian jurisdictions, and with Queensland's broader public sector. For both Serious Misconduct Review and Misconduct Intervention the proposed timeframes provide for 80% of complaints to be dealt with within six to seven months from the first receipt of the complaint.

¹⁶⁵ As expanded by Recommendation 10.

¹⁶⁶ In 2010 calendar year, CMC assessed 3,069 complaints: 44% within 1 week; 77% within 2 weeks and 96% within 4 weeks, (CMC).

¹⁶⁷ CMC Report, p. 61.

Table 7: Proposed Timeframes for Misconduct (Formal) Intervention

Timeframe benchmarks	
For Formal Intervention in response to - Category 2 - Misconduct Intervention matter where Local Management Resolution not applicable (currently CMC's categories 2 or 3 or category B ¹)	
1. If complaint is received at the CMC, refer to the QPS (ESC).	80% within 2 days of the complaint being made
2. If complaint is received within a region (including local level), refer to ESC	80% within 2 days of the complaint being made
3. ESC assessment for referral to region on basic available information and guidance on level of inquiries expected on case by case basis	85% within 2 days of the receipt of the complaint by the ESC
4. Complainant contacted for further and better particulars where required (statement taken if appropriate), or by receipt of complaint made (see Recommendation 48, p. 118)	90% within 14 days of the complaint being first made to QPS or CMC
5. If assessment decision indicates no further action required the complainant to be advised.	Within 7 days of the assessment decision the complainant to be advised
6. Subject officer advised of the complaint* and, on a realistic assessment of the facts, is provided with an <i>indicative outcome</i> (i.e. apology, managerial action plan or a specific sanction that may be discounted for early acceptance)	85% within 14 days of the assessment decision.
<i>If the subject officer does not agree to the indicative outcome, or the matter requires further inquiries, then-</i>	
7. Allocation of matter to investigating officer, conduct of investigation, and delivery of investigation report	80% within 90 days of the assessment decision
8. Where applicable, CMC review final report prior to QPS determining any action.	85% within 14 days of receipt of the investigation report and documentation
9. Determine liability for disciplinary action and indicate a sanction or the range of sanctions possible. Issue show cause notice.	85% within 14 days of receipt of the investigation report and documentation
10. Subject officer submits a response to show cause	Within a minimum of 14 days and maximum of 21 days ³ from the date of the show cause notice
11. Review all material, make a finding on allegations, decide disciplinary action, issue second show cause notice (if range of sanctions only was provided at 1st show cause stage)	85% within 14 days of show cause submission
12. Subject officer submits a response to second show cause regarding proposed sanction only	Within 7 days of second show cause notice

* Step 11 does not apply if sanction particularised in first show cause notice.

¹References to Category B should be taken as consequential to the expanded Category A proposed in Recommendation 10.

The benchmarked timeframes are also but one component in a suite of Review recommendations directed towards improving timeliness.

For local resolution of the more minor conduct concerns and client service matters, the reformed jurisdictions range from finalisation benchmarks within 45 days (NSW);¹⁶⁸ 40 days (Victoria), 30 days (WA), 28 days (Northern Territory).

**Table 8:
Proposed Timeframes for Local Management Resolution and
Misconduct (Remedial) Intervention**

Timeframe benchmarks	
For Local Management Resolution - (currently Breach of Discipline and Client Service Complaints)	85% within 28 days of allocation of complaint to responsible manager*
For Remedial Intervention in response to - Category 2 - Misconduct Intervention matter (currently category B police misconduct matters)	

*CMC and QPS supported within 28 days after being detailed to the regional manager in Project Verity context.
(ESC assessment within 2 days).

The Review recognises that transitional arrangements will need to be made in implementing the benchmarked timeframes, and associated reporting activities to account for matters spanning between two complaints systems and the progression of interrelated reforms. Review of the benchmarked timeframes after the new police complaints system's reforms have been fully implemented for a 12 month period would be appropriate, and would form the base data set for ongoing comparative review. The benchmarked timeframes should be reviewed within three years with the benefit of available data and implementation of reforms.

RECOMMENDATION 14:

It is recommended that timeframe benchmarks in Tables 6, 7 and 8 be adopted, subject to review within three years.

RECOMMENDATION 15:

It is recommended that the QPS procedures and protocols be amended to permit CMC and ESC requests for evidence or information in support of their functions to be made *directly* to and from the ESC and the subject area at even a local level of the QPS.

RECOMMENDATION 16:

It is recommended that the section 40 Directions be amended to provide that the QPS can commence dealing with a matter notwithstanding its inclusion on the (expanded) Category A list, once 14 days has lapsed since the complaint was first provided to the CMC.

¹⁶⁸ In 2008-09, NSW completed 72% of informal resolutions within 45 days.

5.2.4 Accelerated and flexible disciplinary process

The current situation for the QPS where it has been administering two disciplinary systems since 2007 needs to resolve quickly. A Project Verity trial version of chapter 18 of the QPS Human Resource Management Manual (HRMM) is undertaken in two adopter regions, and the balance of the state operates under the original version of chapter 18.

Implementation of an accelerated and flexible disciplinary process across the state that includes the best of both the existing and trialled procedures is a priority.

Central to the new Formal Intervention process will be-

- show cause procedure on the papers;
- subject officer will be advised of the complaint and on a realistic assessment of the facts is provided with a specified *indicative outcome* (effectively a discounted sanction) before the investigation stage commences, and may decide to accept the punitive consequence at that point without needing to advance to a formal investigation process. If the subject officer declines to accept the *indicative outcome* at that early stage then the show cause sanction is *at large* and will be determined anew depending a consideration of the evidence; and
- the ESC adopt a greater monitoring and decision-making role than under the Project Verity trials.

This Review, however, recommends that complaints (other than those indicating possible dismissal or demotion) should proceed on a Remedial Intervention basis, unless and until a decision is made in consultation with the ESC to **'opt in'** to a potentially punitive course through investigation and show cause (Formal Intervention). Whereas, the Project Verity model proceeds on the formal course until it can **'opt out'** to managerial guidance or other non-punitive measure.

The policy document and supporting procedures¹⁶⁹ should be prefaced with an explanatory note that sets out the system's four essential principles: simple, effective, transparent and strong, as well as the fundamental expectations in the administration of the system for timeliness, maximising remedial and restorative justice opportunities, discretionary decisions taken in managing risk, as well as clarity about devolution parameters such as in no circumstances should an officer be investigating another officer from the same police station.

¹⁶⁹ Likely to be Chapter 18 of the HRMM.

RECOMMENDATION 17:

It is recommended that the current situation where two discipline systems operate in the QPS (due to the Project Verity trials) should be remedied as soon as possible once further changes to the QPS system are determined.

RECOMMENDATION 18:

It is recommended that all policies and procedures documents concerned with the police complaints system should include an explanatory note that sets out the four essential principles: simple, effective, transparent and strong, as well as a *statement of system fundamentals* that must be taken into account in exercising discretions and in interpreting policies and procedures, and which include timeliness, risk management, restorative justice principles, remedial intent, and devolution never to the same local level.

5.2.5 Professional Practice Managers (PPMs)

There is a PPM in each of the regions who performs a 'monitor' role¹⁷⁰ in support of the Assistant Commissioner. The monitor is responsible for coordinating, overseeing and in some instances conducting investigations in the resolution of complaints. The PPM also prepares matters for disciplinary hearing on behalf of the Assistant Commissioner and undertakes prescribed officer decision-making duties where appropriate.¹⁷¹ The PPM reports directly to the Assistant Commissioner, as well as the ESC in relation to the review and audit of complaint matters.

Chapter 18 in the HRMM (s.18.3.8) was revised in respect of the role of the PPMs during Project Verity. Further updates to the policy concerning PPMs is being developed by the ESC presently and a QPS training package and mentoring program for PPMs is planned.

The PPM is a critical role with the potential to significantly increase the timeliness in resolving complaints.

There are several opportunities and strategies the Review considers would maximise the potential for an effective PPM *role of excellence* and high standards consistently across all regions. Foremost of which is the critical opportunity the structure provides for redressing two ongoing devolution concerns in the regions:

- the chronic delays in investigations due to their part-time resolution by regional police conflicted by operational responsibilities taking priority; and
- the police investigating police criticisms that devolution of complaints has gone too far to local levels, compromising the impartiality of investigations.

Several consultations in this Review cited concerns with the expectation that operational police could manage timely investigations, and suggested that

¹⁷⁰ See chapter 18, HRMM for list of duties.

¹⁷¹ See also role description in CMC Report at p. 69.

investigations be centralised at PPM level with more support to the PPMs or at the ESC with a regional presence. Every focus group throughout the state in 2010 raised concerns in balancing demands of operational duties with complaints investigations and that complaints were delayed as a consequence. Investigating officers complained that little or no support was provided by the Ethical Standards Command when conducting such investigations.¹⁷²

However, some Assistant Commissioners opposed centralising the investigation function in the regions at the PPM level and disagreed that responsibility for PPMs should be transferred to the ESC because an effective PPM was 'essential' support for the Assistant Commissioner in managing resolution of complaints in regions although it was acknowledged that there were inconsistencies across the regions.

The Queensland Police Union of Employees proposed,

... a system whereby the Ethical Standards Command assume central control of the assessment, investigation and laying of disciplinary charges for all police misconduct throughout the state.

Under this model, complaints would generally be investigated by ESC staff, whether in Brisbane or regionally. [PPMs] would remain within their district, but they would be regarded as ESC staff rather than regional staff, with a direct reporting back to the ESC.¹⁷³

This Review supports centralising complaints investigations as a primary strategy in reducing significant delays:

[NB. The number of investigations (and disciplinary hearings) under a Misconduct Intervention Model recommended at pp. 53-59 above would be considerably less than the volume managed currently.]

Recommended:

Option 1 - Centralised at regions, with greater ESC support

- Assistant Commissioner responsible for central control of investigations and laying of disciplinary charges throughout the region (assessments and allocations by the ESC).
[NB. ESC may retain some matters for ESC investigation, in the public interest consistent with a s.34 principle approach.]
- All investigations by the PPM and Assistant PPMs, or where a matter is complex or intensive Inspector level or above offline to finalise investigation on a full time basis. Supplementary resources may be available from the ESC by negotiation. Pending caseloads, Assistant PPMs may assume the role as and when peakloads require, and perform operational duties at other times.
- PPMs are responsible to the Assistant Commissioners, but are to make same time (cc) progress reports to the ESC.

¹⁷² Focus Group Report, p. 9.

¹⁷³ QPUE, Submission to the Independent Review Panel, p. 7.

- If a disciplinary hearing is required, Assistant Commissioners decide the prescribed officers to hear and determine matters.

Option 2 - Centralised to Ethical Standards Command

- ESC central control of investigations and laying of disciplinary charges throughout the state.
- All investigations by ESC staff.
- PPMs continue in regions as staff of the ESC with a regional presence and first responsibility for conducting investigations in that region. PPMs may have Assistant PPMs based in the region also, or supplementary resourcing from the ESC as required.
- PPMs also responsible for formal and informal progress reports on complaints resolution to the Assistant Commissioners.
- If disciplinary hearing is required, Assistant Commissioners decide prescribed officers to hear and determine the matters.

Both options propose advantages in increased timeliness, quality and consistency of investigations due to-

- *fulltime* investigations (not working around rosters and competing operational priorities);
- *continuity* in a team approach in responsibility for investigative caseload; and
- current *skills* sets and experience to apply to specific application in a disciplinary, as distinct from a criminal, investigation.

Both options require a reallocation of resources internally in the short term to manage a different focus in roles, but the net intended effect due to efficiency dividends is that the system would be self-funding and over time yield net savings. In addition, there would be indirect benefits to workplaces (e.g. morale, confidence in self-reporting), and to the public interest, of a more efficient and credible complaints system. Both options ensure that investigations can be kept at arm's length from the prescribed officer determining matters.

Option 2 gives more direct flexibility to move resources across regions as needed, and is backed by the specialist expertise of the central command for professional standards.

Option 1 maintains a core business responsibility for professional standards within the regions, together with the specialist back up of the ESC as required. An Assistant Commissioner's local knowledge and responsibility in tasking investigations and promoting public confidence commends option 1. Option 1 also holds advantage over option 2 in that it retains more direct corporate knowledge of the current state of ethical conduct in the regions with the Assistant Commissioner's core business responsibilities. Option 1 also accommodates the PPM's additional role in support of the Assistant Commissioner in Remedial Intervention (new), or managerial guidance and informal resolution (current) measures.

Implementation of the New South Wales model which uses complaint management teams in the regions (to conduct investigations and assist local investigations) has been regarded as successful and will offer precedent value to the design of the Queensland model.

Additional suggestions to improve the efficiency and effectiveness of the PPM role (under either option) include:

- Clarity of role statement and reporting responsibilities with an up to date specific role description (not a generic Inspector role);
- PPM to be a dedicated professional standards resource, not to be applied to alternative operational tasking;
- PPM to be supported in a broader responsibility for development and implementation of prevention and proactive risk minimisation strategies;
- PPMs be supported by an 'ethical network' of PPMs and ESC representatives for sharing learnings, developments in roles, and emerging risks (the CMC should be invited to participate also);
- ICT system improvements to support the PPM (and ESC) in early intervention risk profiling;
- Applied tenure arrangements with a minimum of two years and a maximum of four years (ideally, three to four years as PPM and two to four years as an Assistant PPM) to ensure sufficient expertise in the role but minimise incumbency risks of capture or bias. (Current instances where the PPM role is used as an acting opportunity for 3-6 months in an Inspector role do not accord with the critical importance of the role and should not be practised);
- Engagement of Assistant PPMs at Senior Sergeant and Sergeant level, as well as non-police support staff as may be required;
- Quality Selection and Recruitment Strategies-
 - Discernment-
Under either option the ESC should be included in the selection process either on the selection panel or by way of consultation to assist in informing decisions that the proposed candidate is of the highest ethical standards,
 - Incentives -
The role of PPM should be reassessed to indicate whether Superintendent or Inspector rank is appropriate under new arrangements and as an incentive for quality candidates. If at Inspector rank, then a human resource strategy that prioritises recognition of exemplary service in the roles of PPM should be considered in promotions (see Recommendation 3(d), p. 42) as well as a service-wide expectation that promotion to Inspector will require service in PPM (or ESC) capacity. Other incentives such as those considered in remote area incentives schemes (e.g. additional leave provision) may be justified in attracting high quality candidates and providing reward incentives.

- New Professional Standards stream -

There are four current streams to which Inspectors are appointed: General, Education, Legal and Investigation. Currently, PPMs and IIB investigators are listed under the General stream only which limits the pool from which quality candidates may be drawn. A fifth stream, 'Professional Standards' would recognise -

- its core business priority;
- the special skills required in the investigation and management of complaints;
- a career path for investigators at non-commissioned officer level;
- it would assist in the selection of quality investigators who are keen to undertake that type of work.

Also, provision should be implemented which entitles the ESC (and Assistant Commissioner's for PPMs) to have first selection rights from newly commissioned officers on a rotational turn basis with other commands such as Crime.

- Training and skills certification for the PPM and Assistant PPMs-

Expert training or current skills certification of competency in the difference in standard of proof and standard of investigation in discipline as distinct from crime is essential as a pre-condition to placement as a PPM. A one month ESC placement has been used previously and may form part of the necessary upskilling required to take on the PPM role expertly and to a leading standard. The CMC and the QPS should collaborate in the development of a suitable training package for the PPMs and ongoing guidance and support to PPMs.

- Training input by the PPM -

PPMs should draw on their experience of the particular needs of the region in terms of risks and treatments to input into the development of contextualised ethical standards scenario-based training for officers in that region. This appreciates the different risks that can present across the state and the need to tailor training to those risks. The PPM is ideally placed to contribute to the development of such targeted training.

RECOMMENDATION 19:

It is recommended that complaints investigations should not be devolved to operational police at a local level but that centralising investigations at regional level under the management of PPMs and Assistant PPMs (and with greater ESC support), be approved.

RECOMMENDATION 20:

It is recommended that the critical capacity of the Professional Practice Managers to improve the timeliness, efficiency, effectiveness and thus economy of the police complaints system is recognised as a priority organisational strategy, and is supported by-

- a) quality selection and recruitment strategies, including,
 - (i) reassessment of the role of PPMs to indicate whether Superintendent or Inspector rank is appropriate under new arrangements and as an incentive for quality candidates;
 - (ii) a new Professional Standards Stream for appointment of Inspectors, which is in addition to the current General, Education, Legal and Investigation Streams;
 - (iii) entitlement for the ESC, and Assistant Commissioners in selection of PPMs, to have first selection rights from newly commissioned officers on a rotational turn basis with other commands such as Crime; and
 - (iv) inclusion of the ESC in the selection process for PPMs (either through inclusion on the selection panel or in consultation with the ESC),
- (b) determination and promotion throughout the QPS of a clear, supported, and dedicated *new* role for PPMs, including-
 - (i) review and approval of a revised role statement for PPMs that is clear, current, and specific to the PPM role (not a generic Inspector role);
 - (ii) wherever practicable, PPMs should be applied as a full-time professional standards resource;
 - (iii) inclusion in, and support for, a broader responsibility for development and implementation of prevention and proactive risk minimisation strategies;
 - (iv) an 'ethical network' of PPMs and ESC representatives for sharing learnings, developments in roles, and emerging risks - the CMC should have a standing invitation to participate in the ethical network also, in its capacity building function;
 - (v) ICT improvements directly supporting the PPMs (and their Assistant Commissioners) in the regions in early intervention capability;
 - (vi) encouragement of limited terms of appointment in PPM and Assistant PPM roles (minimum of two years and a maximum of four years) to ensure sufficient expertise in the role but minimise incumbency risks of capture or bias; and
 - (vii) engagement of Assistant PPMs at Senior Sergeant and Sergeant level, as well as administrative staff support, as approved by region, on a case needs basis,
- (c) expert training and skills certification (as may be described in the specific role statements) for the PPM and Assistant PPMs; and
- (d) a feedback loop *from* PPMs in supporting effective QPS training through ensuring specific input by PPMs from their experience of the particular needs of their regions into ethical standards scenario-based training packages developed by QPS, in consultation with the CMC, for targeted delivery to officers on a region by region basis.

5.3 Clarity and certainty

Other factors that may impact on the timeliness in the resolution of complaints concern procedural or legal requirements that are unclear or uncertain, or the subject of dispute or misapprehension.

5.3.1 'Inextricably interwoven with court proceedings'

Recommendation 3 of the CMC Report, *Setting the Standard*, seeks a review of QPS policy and procedures for complaints management to incorporate the recommendations it made in its 2007 audit of 2005-06 complaints that had been delayed by the QPS as 'interwoven with court'. Recommendation 3 also seeks to ensure that adequate training is addressing the audit findings.¹⁷⁴

The recommendations have been incorporated in the Verity version of chapter 18 at s.18.3.13.1. The QPS advised the Review,

The Verity policy was trialled in [North Coast Region] (since July 2007) and [Metropolitan North Region] (since March 2008). The QPS regularly met with the CMC through a Steering Committee and Working Party in an attempt to reach agreement on the Chapter 18 Policy. The QPS developed over 30 versions of the Verity policy in response to requests for changes by the CMC. The current Verity policy was agreed to by the Commissioner and the Chairperson on 1 April 2010. The QPS was to commence training in July 2010. In late May 2010 the QPS and CMC agreed to delay the rollout of Verity for 12 months as a result of the CMC [Setting the Standard] report. This was formally agreed by the Chair CMC on 10 August 2010.¹⁷⁵

5.3.2 Police related deaths

The Review is advised that matters categorised as police related deaths are the subject of current negotiations for a revised Memorandum of Understanding between the State Coroner, the QPS, and the CMC *'for the development of an investigative model involving an increased role by the CMC, following coronial recommendations arising from the Mulrunji inquests'*.¹⁷⁶

The State Coroner is responsible for the investigation of deaths in Queensland.¹⁷⁷ The QPS are first responders, and responsible for crime operations. Currently, the ESC (QPS) investigates a police-related death and reports to the CMC in a monitoring role.

This Review has considered relevant material made available to it and is concerned to highlight that new arrangements and understandings need to ensure clarity of roles and responsibilities; how disagreements will be resolved; how additional capacity requirements when peakload demands will be managed across agencies in emergent circumstances; and how

¹⁷⁴ CMC Report, pp. 59-60.

¹⁷⁵ QPS, 25 February 2011.

¹⁷⁶ CMC, February 2011.

¹⁷⁷ *Coroners Act 2003*.

geographic challenges will be met. Arrangements should also manage the difficulties in definition of a police related death and timing factors.

RECOMMENDATION 21:

It is recommended that changes in the respective roles, responsibilities and procedures in the event of a police-related death, be agreed and resolved with the CMC, QPS and the Coroner as a priority.

5.3.3 Consistency and clarity in investigations

During Review consultations (and in the Focus Groups last year), confusion concerning preliminary investigations (preliminary enquiries) as contrasted with full investigations was evident. The former tending inappropriately to the latter. Another concern, frequently raised during this Review's consultations was the confusion shown by many investigators in conducting full investigations appropriate for a crime and not for a disciplinary proceeding.

The new policy in the (Verity version) of chapter 18 (18.2.4.3) identifies factors to take into account for better decisions on the extent of investigations.

4.3 Extent of the investigation

The investigating member is to make a reasoned decision as to the extent of the investigation taking into account the:

- (i) classification of the conduct;
- (ii) degree of seriousness of alleged conduct;
- (iii) requirement to clearly describe or identify the conduct;
- (iv) public interest;
- (v) resources needed to investigate;
- (vi) liability of the Service or any other person or body to compensation or litigation; and
- (vii) the requirement to ensure procedural fairness.¹⁷⁸

Investigators might be assisted by some guidance (or an explanatory note) on relevant factors to take into account in determining the 'public interest' in the extent of investigations such as *timeliness* of investigations, and an assessment whether additional avenues of enquiry are likely to affect liability or sanctioning (and if not then such need not be pursued).

This policy as amended should assist when applied to all the regions in the state (beyond Verity trials) and PPMs should be alerted to the guidance.

¹⁷⁸ HRMM, Chapter 18 (s.18.2.4.3).

PPM and investigator training should include these distinctions as well as-

- the distinction between the disciplinary standard of proof (balance of probabilities) which applies and the criminal standard of proof (beyond a reasonable doubt) which does not apply (see CMC Report pp. 74-74); and
- guidance on the 'requirement to ensure procedural fairness' to assist in prudent and compliant investigations not unnecessary investigations. Training for PPMs should ensure competency in preparing investigation reports and writing decisions

RECOMMENDATION 22:

It is recommended that in respect of the extent of investigations as provided for in the HRMM that guidance on the relevant factors to take into account in determining the 'public interest', be included.

RECOMMENDATION 23:

It is recommended that PPM and investigator training ensure an understanding of the distinction between disciplinary standard of proof and the criminal standard as well as a competency in meeting procedural fairness without undue excess. That training should include decision-writing.

5.3.4 Acting in good faith

Case Study 3 (p. 46) of the CMC report, *Setting the Standard*, indicated that there may be a discordant view concerning 'acting in good faith' and, to the extent to which that may impact on managing police complaints, this Review sought clarification.

The CMC expressed concern to the Review about QPS decisions *not* to take disciplinary action on the basis that the subject officer had acted in 'good faith'.

The QPS responded that it agrees that there is no 'good faith immunity', and that disciplinary action decisions should be made on the basis of fault and achieving the purpose of discipline.¹⁷⁹ QPS also agrees that mistake or ignorance about the law is a fault issue.

The mere raising of a claim of ignorance of law or duty as a complete excuse for improper conduct has not been suggested, and although it is agreed that a decision-maker is to make a reasoned conclusion about the matter on the basis of evidence and to deal with the matter in a way that best achieves the objectives of discipline, it is clearly evident from submissions and

¹⁷⁹ Purpose of disciplinary proceedings at s. 219A *Crime and Misconduct Act 2001*, and s. 3 *Police Service Administration Act 1990*.

consultations to this Review that the following two issues remain open for a difference of opinion and tension between the CMC and the QPS:

1. *The extent to which a prescribed officer should take notice of a judicial decision, and be influenced by judicial findings on facts in issue.*

The disciplinary decision-maker is not bound by a judicial decision on a related criminal prosecution because of the differences in the criminal and discipline systems such as the different standards of proof and the different evidence that may be available (e.g. answers made during an involuntary directed disciplinary interview are not admissible in court).

2. *The role of the disciplinary system concerning a purported exercise by a police officer of a power on the mistaken or ignorant understanding of the law.*

A lack of clarity or disagreement about the management of complaints in this area has the potential to impact on the confidence of officers in handling their roles in potentially volatile environments. It would be a wrong message for officers that if an arrested person was found 'not guilty' in subsequent criminal proceedings that their arrest of that person would thereby be the subject of disciplinary proceedings against them. This Review would counter that such a result is not consistent with the purposes of disciplinary proceedings as set out in section 219A of the *Crime and Misconduct Act 2001* and section 3 of the *Police Service Administration Act 1990*.

- a) to protect the public; and
- b) to uphold ethical standards within units of public administration and the police service ; and
- c) to promote and maintain public confidence in the public sector.

Nor would that outcome be consistent with the remedial (not punitive) intent of the current police complaints system, and even less so under the design initiatives in this report (see 'police *managing* police' at pp. 55-59).

Outstanding concerns in these two areas need to be resolved between the CMC and the QPS, after which communications and guidance to relevant officers can be consistent with the agreed approach of the agencies.

RECOMMENDATION 24:

It is recommended that the QPS and the CMC settle an agreed position concerning acting in good faith that includes a purported exercise of power on the mistaken or ignorant understanding of the law as a matter for remedial intervention. In the event that an agreed position is not settled between the QPS and the CMC, the matter should be made the subject of an appropriate reference to the Queensland Law Reform Commission.

5.3.5 Absence on extended sick leave

The CMC report, *Setting the Standard*, identified 'absence on extended sick leave' as an issue that can delay the resolution of complaints. The CMC suggested a more proactive approach requiring positive action beyond the current QPS policy provision for the Assistant Commissioner, ESC to be consulted on action to be taken in those circumstances.

On this issue, the Queensland Police Union of Employees submitted,

The QPUE does not encourage officers to inappropriately take sick leave due to impending discipline action. Our consistent advice is to (where at all possible) work and show the QPS that you are a valuable asset, right up until the day of the discipline hearing. It must however be accepted, as we are sure it would be, that some officers are genuinely affected by ill-health, whether as a pre-existing condition (often linked to their apparent misconduct) or due to the stress [of] a discipline investigation.

Our anecdotal evidence is that officers going on sick leave during discipline proceedings would form a very small percentage of all cases. Most officers want the matter resolved quickly, not prolonged.¹⁸⁰

The QPUE supports a less formal written means of finalising such a matter when the concern arises.

The show cause and other recommendations in this report should address most incidents of concern. Consultations during this review also agreed and encouraged the use of the Assistant Commissioner's discretion¹⁸¹ as provided in the policy as and when necessary to bring matters to a timely resolution.

The forensic medical officer process is also available in prolonged cases of absence or when there are concerns as to medical fitness for duty.

RECOMMENDATION 25:

It is recommended that the QPS amends the relevant policies dealing with-

- a) sick leave or other health or fatigue related absence during a disciplinary matter to ensure it is addressed through-
 - the written show cause notice processes, including benchmarked timeframes;
 - exercise of the discretion of the Assistant Commissioner, ESC, including a positive obligation on an officer responsible for dealing with a complaint to refer a matter to the Assistant Commissioner, ESC; and
 - assessment by the forensic medical officer, where appropriate.

¹⁸⁰ QPUE Submission to the Independent Review Panel, p. 17.

¹⁸¹ HRMM, 17.1.3.

- b) *Extended Sick Leave of Subject Members* in s.18.2.5 of the HRMM should be amended to -
- remove 'extended' when referring to sick leave; and
 - include consideration of risks and need for medical assessment as part of the decision to direct a subject member on sick leave to an interview.

5.3.6 Frivolous and vexatious complaints

In the Focus Groups last year, 383 of the 538 participants raised concerns with the initial vetting and handling of complaints, some bordering on the frivolous in nature. For example, a complaint was made against a police officer because the person who made the complaint,

... felt intimidated by the size of the officer's biceps as they protruded from his uniform shirt. Focus groups participants were of the view in respect to this particular issue, the complaint should have been dealt with managerially, instead of resulting in a full complaint investigation which evidently took several months to complete. According to focus group participants, the officer in question was not aware he was under investigation for this matter until receiving a letter exonerating him.¹⁸²

Recommendations in this report would direct any such complaints (that were not vetted as 'not for action') to be considered by management and not by formal investigation as part of a disciplinary proceeding (see pp. 55-59). This report also recommends that officers should be informed in the initial phase of any investigation (contrary to current practice but consistent with the Verity trials). (see pp. 76, 78).

Under section 216 of the *Crime and Misconduct Act 2001*, and section 10.21 of the *Police Service Administration Act 1990*, provision is made for an offence in the making a frivolous or vexatious complaint. A review of recent CMC public material concerning the making of complaints confirms that complainants are clearly warned as to the consequences of such.

Focus group participants contended that the legislation was difficult to prosecute. Concerns were also raised that complainants could effectively 'forum shop' by making complaints in another region even if already formally nominated by a District Officer in one region as being vexatious. During the Focus Group in one region, participants referred to,

... a person who had made in excess of 30 complaints against members of the Service during a relatively short period of time (3 years). Each of these complaints required an investigation to be undertaken, with no matters evidently being substantiated. ... this particular complainant had known mental health issues. The complainant was subsequently nominated by the District Officer as being vexatious, and was advised of their status in writing. The complainant's response to this was to make another complaint in a

¹⁸² Focus Group Report, p. 12.

different Region, thus resulting in another complaint investigation being undertaken. Focus group participants were clearly of the opinion where police were 'right' for a complaint, they should be disciplined. A great sense of frustration existed however in that it is perceived little could be done to deter known vexatious complainants. Some focus group participants felt their only recourse in such instances was to sue the complainants directly through civil litigation.¹⁸³

Clearly, this 'forum shopping' scenario wastes finite resources which should be deployed to genuine complaints. The information management system with the QPS should ensure that where a region has formally declared a person to be vexatious, the fact of that existing declaration should be readily available to other regions, and checked as part of the initial vetting process.

RECOMMENDATION 26:

It is recommended that the ESC include in its business case for the replacement IT solution for the management of discipline and complaints, the ability to-

- a) maintain a central record of declared frivolous or vexatious complainants that should be checked in the initial vetting of all complaints in regions; and
- b) communicate to members the data, risks and treatments in place to manage evidence-based perceptions.

5.3.7 Privilege from self-incrimination

As the CMC report, *Setting the Standard*, explains,

The privilege against self-incrimination arose historically from the need to ensure that authorities did not employ oppressive methods to obtain evidence from people and use it against them to prove their guilt. QPS members may claim privilege in the course of:

- disciplinary proceedings conducted by the QPS
- coercive hearings conducted by the CMC
- proceedings conducted by the QCAT.¹⁸⁴

Under the *Police Service Administration Act 1990*, the Commissioner of Police has directed officers to answer questions in a disciplinary investigation notwithstanding the privilege, and that a failure to do so is liable to disciplinary action. This direction is consistent with the similar abrogation of the privilege in other states because, as Fitzgerald explained, a police officer is not in the same position as an ordinary citizen and '*an obstinate silence is an unacceptable impediment*' in addressing concerns of police performance.¹⁸⁵

The CMC's recommendations¹⁸⁶ seek to ensure that the abrogation of the privilege also applies in any proceedings before QCAT but subject to the

¹⁸³ Focus Group Report, p. 13.

¹⁸⁴ CMC Report, p. 71.

¹⁸⁵ Fitzgerald Report, p. 294 and quoted in CMC report at p.71.

¹⁸⁶ CMC Report, p. 72.

safeguard that it cannot be used in criminal proceedings against the member, except in specific circumstances. However, the terms of the derivative use immunity proposed in the recommendation causes concern and warrants further consideration. The QPS has identified a range of difficulties including in balancing competing public interests in direct or derivative use of information obtained coercively; its possible effects on other proceedings such as in civil action against the state; and the lawful (or otherwise) release of the subject information in the public domain.

In the original jurisdiction of QCAT, witnesses are able to refuse to answer a question on the ground of self incrimination privilege,¹⁸⁷ which means that previous statements made by witnesses who claim the privilege cannot be tested and therefore cannot be relied upon as evidence before QCAT. This is a 'significant problem' for the CMC in bringing matters before QCAT.

Consultations with the QPS suggest that the broader the use or disclosure permitted of information or evidence from a directed disciplinary interview, the more cautious an officer will be to make full and frank disclosures and accept responsibility for the conduct. This consequence would also have a detrimental effect in the disciplinary context.

Though the Queensland Police Union of Employees also generally supports the rationale for the recommendation, it has raised with the Review its significant concerns with the CMC's recommendation in the *Setting the Standards* report in its current form.

The difficulty with the formulation proposed in Recommendation 6 is that it effectively criminalises untruthfulness in the employment context. This would be, we suggest, an unprecedented development in the law. In our experience it is unheard of that a person's *unsworn* yet compelled answers to an employer might then be used as evidence against that person in a subsequent criminal prosecution. If a police officer is untruthful in a disciplinary context, they should suffer the consequences (including perhaps being dismissed) in an employment context. It does not follow though that their answers should be used to prosecute them.

The QPUE also rejects the suggestion that effecting clarity in the abrogation of the privilege will enliven the practical availability of the QCAT in its original jurisdiction because,

...that would be a novel development; that a person facing a charge (as opposed to a mere witness) can be compelled to give evidence in their own defence at their 'trial'. Such a power is unnecessary of course, as the power to compel answers exists at the investigation stage. That is the appropriate time for obtaining information and evidence, not during the hearing itself.¹⁸⁸

¹⁸⁷ *Queensland Civil and Administrative Tribunal Act 2009*, s. 98(3).

¹⁸⁸ QPUE Submission to the Independent Review Panel, pp. 20-21.

The *Crime and Misconduct Act 2001* provides for derivative use immunity in section 385 but it applies to *sworn* evidence in a misconduct hearing which in contradistinction from the 'employment/disciplinary context' highlighted by the QPUE. The QPUE also raised concerns as to the adequacy of the protection provided to the officer extending to civil liability. The QPS highlights that the avenues for use and disclosure of the subject information is expanding (e.g. Right to Information requests, disclosure at a Coronial Inquiry).

The Queensland Law Reform Commission in its 2004 report on *The Abrogation of the Privilege against Self Incrimination* recommended that the privilege be available in non-judicial matters, which means in disciplinary matters. The Commission also recommended that legislation define the principles governing the abrogation of the privilege and proposed a draft Bill. To date, the Government has not implemented that report.

The direct and derivative use of information or evidence from a directed disciplinary interview is a difficult area, with significant practical implications and competing public interests. Importantly, the issues also have broader implications for Government because changes in the police disciplinary context may create unintended consequences elsewhere in other public sector disciplinary systems. A careful, substantive policy review to cover the field adequately across the public sector, and not just at the obvious police disciplinary pressure point, is required. This should include a consideration of the Queensland Law Reform Commission matters raised in its 2004 report. Such is well beyond the scope of this Review.

RECOMMENDATION 27:

It is recommended that an independent review be undertaken to -

- consider whether the privilege from self incrimination should be abrogated in disciplinary as distinct from criminal matters;
- examine the direct and derivative use and disclosure of information obtained during disciplinary or coercive proceedings in the whole Queensland public sector (including in the police disciplinary context);
- identify an appropriate balance between competing public interests; and
- make recommendations that set out the circumstances when coercively obtained information or evidence can not be used.

5.3.8 Public Interest Disclosures

Some concern was expressed during Review consultations that the Commissioner's chief executive responsibility to develop, implement and maintain a management program for public interest disclosures as defined under the *Public Interest Disclosure Act 2010*¹⁸⁹ could mean an unintended burden on the QPS and its police complaints system because of the nature and extent of existing reporting obligations on officers under the police complaints system as part of their core duties. The concern was that the new requirements would technically over-represent the extent of public interest

¹⁸⁹ *Public Interest Disclosure Act 2010*, s. 28.

disclosures in QPS, and over-burden the organisation with the number of unnecessary whistleblower management and programs as a consequence.

In contrast to the pre-Fitzgerald organisation, one quarter of all police complaints are now made by police.

Corresponding to the requirements under the new *Public Interest Disclosure Act 2010*, QPS resourcing for the protection and support to whistleblowers has increased from a part-time unit to a full-time unit staffed with three full-time senior officers to handle the increased workload.

The Public Service Commission's *Public Interest Disclosure Standard (No. 1)*¹⁹⁰ explains that agencies need to make a risk assessment of a reprisal to the discloser (and associated others) in respect of every public interest disclosure to determine whether the discloser will need protection and support, and therefore whether a whistleblower protection plan is required. Accordingly, although QPS needs to conduct a risk assessment on every public interest disclosure as defined under the legislation, subsequent action needs to be scaled to risk and no management plans will be required in respect of some disclosures.

Review of the implementation of the new Act's requirements in QPS after the first year will assist in checking that treatments are corresponding to risk. Section 62 of the *Public Interest Disclosure Act 2010* requires a legislative review of the Act be commenced within five years. Review of the operation of the Act has a broader and more strategic objective in contrast with a review of the QPS' implementation which is more in the nature of an internal audit, in consultation with the Public Service Commission as the relevant oversight agency.

The greater potential for unnecessary burden in the system though arises from the application of the CMC policy in the assessment stage of police complaints where complaints are assessed at their 'highest potential'.¹⁹¹ The application of this policy escalates the categorisation of matters, as a matter of policy as distinct from an assessment of evidence, which presents more matters in the early phase of police complaints as 'official misconduct' which then triggers section 13 in the *Public Interest Disclosure Act 2010* as a public interest disclosure more frequently than it would were it not for the policy of assessing matters at their highest. The risk assessment process under the *Public Interest Disclosure Act 2010* will filter the additional matters from needing whistleblower management plans, but the additional risk assessment workload remains. The recommended *Joint Assessment* process (p. 73) for police complaints should assist in better informing decisions on initial assessments to ensure due regard to the individual circumstances of a complaint.

¹⁹⁰ Public Service Commission, *Public Interest Disclosure Standard No. 1*, pp. 2-5.

¹⁹¹ *CMC Policy - Assessment*, s.4.1.1, p. 3: 'A complaint shall be assessed at its highest potential in terms of the seriousness of the conduct alleged, having regard to the circumstance and in the context of any relevant legislation, policy or procedures.'

RECOMMENDATION 28:

It is recommended that the Public Service Commission and the QPS review the first year of implementation by the QPS of the risk management approach under the *Public Interest Disclosure Act 2010*.

5.3.9 Inconsistent requirements

There was also some suggestion during Review consultations that the regions experienced too frequent changes to ESC procedural requirements, as a result of changes to personnel. The ESC was not able to identify instances of those concerns.

The Focus Groups had also suggested that there were inconsistencies in regional policies leading to additional investigations. The matters of most concern were the 'police related incidents' not the subject of complaints which were subjected to full investigation as complaint (fault) rather than fact-finding (truth) files regardless of the circumstances and even where there was full video evidence. The ESC has indicated that it does not require a full investigation when the injury is not serious and no evidence exists of a policy or procedural breach.¹⁹²

Regardless of whether regional or ESC inconsistencies in police complaints policies and procedures are real or perceived, the recommended enhanced role and standing for PPMs supported by a regional network of PPMs (see pp. 86) should identify concerns and any inconsistencies for resolution in consultation with the ESC and Assistant Commissioners.

5.4 Early intervention

An effective police complaints system includes a proactive and preventative approach to reduce misconduct, and the incidents giving cause for complaint.

QPS undertakes early intervention in behaviours requiring additional support before misconduct or a breach of discipline occurs. This includes,

A dedicated Risk Analysis and Intelligence Section (RAIS) that forms part of the ESC Ethical Practice Branch which compiles risk assessments and complaint summaries specifically to assist senior management to identify risk factors such as individual officers, work environments, geographical or demographical factors, specific duty types and develop strategies aimed at complaint minimisation and misconduct/disciplinary breach prevention.¹⁹³

RAIS reports are provided for review in early intervention strategies. There is scope for improvement in early intervention support as well as in regional responses in identifying problematic behaviours and taking corrective action.

¹⁹² Focus Group Report, p. 25.

¹⁹³ QPS Submission to *Integrity and Accountability in Queensland Discussion Paper*, September 2009, p. 11.

The QPS advises that RAIS is currently reviewing processes to ensure more rigour in the identification of problem officers and in oversighting strategies employed to address concerns.

Some of the Review consultations favoured the intensive approach taken by the New South Wales and Victorian police services which also use sophisticated tools and analysis to support early performance and welfare interventions such as early warning indicator tools, behaviour risk matrices and extensive indicators, as well as advanced integrity testing tools. There may be more scope for collaboration and capacity building with the CMC in early intervention and regional performance in these areas, especially partnered with CMC research and analysis capabilities.

Consultations also found that there are serious limitations in review and analysis presented by existing data challenges principally due to the information technology system (see further at pp. 100-102).

The QPS Operational Performance Reviews (OPRs) now prioritise *Professional Standards and Ethical Practice* as the first agenda item. Executive scrutiny and the opportunity to collaborate on continuously improving strategies would be strengthened if the CMC could attend the OPRs at least for the first agenda item regarding professional standards and ethical practice.

The following measures would also assist in early intervention activities and outcomes-

- an enhanced role and standing of PPMs will better support their role, and the Assistant Commissioners, in identifying and supporting early intervention measures (see p. 86);
- a significantly improved information system that manages, analyses and reports data efficiently and is available in the regions in support of the PPM and the Assistant Commissioners in their respective roles (see more at pp. 100-102);
- a quality performance management system (see pp. 68-69) that supports supervisors in managing staff and their performance outcomes - and provides a framework for managing early performance concerns before they develop into concerning behaviours or poor standards of ethical and professional conduct;
- a tool kit of guidance and training for supervisors to improve their ability to recognise and identify concerning behaviours, and importantly, support with the skills and strategies to manage those behaviours fairly and effectively in avoiding an escalation into the police complaints system. (As an ongoing resource, this would complement the existing training modules and others currently under development in the Professional Development Program. Active, scenario-based training components are supported.);
- an integrated approach in early warning linking the ESC and the human resources services area in identifying 'at risk' workplaces or officers as may be evidenced by a coordinated overview of performance alerts, grievance activities and conduct concerns;

- specific treatments for 'at risk' environments or workplaces. Different workplaces can be exposed to different internal and external risks in resistance to misconduct or corruption which can require different strategies (risk treatments) to support officers and protect the organisation. For example, Operation Tesco profiled a high risk environment in which officers work in some areas in the South Eastern Region. A risk management plan responding to a particular workplace profile, may determine that officers should be rotated or rested from specific workplaces within a region to minimise risk and support officers in managing ethical pressures that can arise in the course of their duties. This is not a new idea, and in consultations union support for it was raised. Fitzgerald said, '*As a general rule, officers should be rotated through sensitive or 'high risk' areas on a three to five year basis*'.¹⁹⁴

RECOMMENDATION 29:

It is recommended that-

- a) the QPS provides an open invitation for the CMC to attend any Operational Performance Review in its capacity building role, for the professional standards and ethical practice agenda; and
- b) an Early Intervention Working Party be established to support the continuous improvement and review cycle for the *QPS Corruption Prevention Plan 2009-2013* and in particular in review of-
 - early intervention strategies and tools and an examination of leading practice opportunities; and
 - specific treatments for 'at risk' officers and/or environments or workplaces.

The QPS working party should include the CMC and the unions.

5.5 Self-reporting

QPS encourages officers to self-report misconduct or breaches of discipline. However, a system that is widely regarded as overly legalistic, adversarial, untimely and punitive is not likely to encourage officers to self report and subject themselves to a process so disregarded. Improvements in respect and trust in the system will take time to achieve. This Review considers that a specific incentive for self-reporting should also be widely communicated to police officers throughout the organisation as part of a renewed system that prioritises the ethical and professional conduct of its members through the express remedial intent and practice of a more simple, effective, transparent and strong police complaints system.

The criminal justice system effectively discounts penalty in exchange for pleas of guilty. There is more reason in a system that prioritises remediation over punishment, to incentivise cooperation by reducing adverse consequences for participants. Under the Administrative Consensual Discipline Process (ACDP) in the Project Verity trials, a subject officer who made admissions

¹⁹⁴ Fitzgerald Report, p. 255.

would benefit from an accelerated process involving a lower range of sanctions. This Review considers that a self-reporting officer, who would be liable to a penalty, should receive a reduced penalty in consideration of the self-report, that is, the lowest of the lower range of sanctions, or no sanction at all in favour of Remedial Intervention measures.

Consequently, in addition to the new proposed schema with the advantages of-

- an accelerated investigation that is expedited by agreed facts;
- a roll out of a show cause process across the state instead of a disciplinary hearing format; and
- the already reduced numbers of cases that require Formal Intervention and formal sanctioning compared with Remedial Intervention,

officers should be encouraged to self-report by the corresponding reduction in penalty that will be offered due to their self reporting and accepting of responsibility for their actions.

A concerted organisational effort and incentives to encourage self-reporting will help break down any cultural instinct to 'cover up' by taking advantage of extended investigations and hiding behind the 'code of silence'.

In a determination of sanction, a prescribed officer should be permitted to consider the nature and extent of relevant remedial intervention directed at conduct and performance improvement, as well as the time taken to reach a determination and the reasons for that delay. These matters are relevant in determination of sanctions according to new range in Table 9, p. 107).

The ethical health and the professional standards of the organisation will benefit more from a greater number of officers who step forward and take responsibility for their conduct and participate in remedial consequences - even if less punishment is accorded - than officers who 'gamble' on the complaints system not finding them out even if the punitive consequences would be greater if and when 'found out'. For Remedial Intervention matters where the conduct would not have justified a Formal Intervention punitive component in any event, self-reporting should inform the managerial response and guidance measures required.

5.6 ICT solutions

The QPS and the CMC agree that the current information technology system (CSS and CSS.NET¹⁹⁵) for managing police complaints and favourable comments (and related data) is in *urgent* need of replacement because it-

- does not meet QPS business requirements;
- is unable to support the demands of managing public interest disclosures under the *Public Interest Disclosures Act 2010*;

¹⁹⁵ CSS is the COMPASS complaints management ICT system adopted from the CMC, and renamed Client Service System (CSS); browser-based .NET forms added in 2007 for investigator access in the two Project Verity Adopter regions (known as CSS.NET).

- can not manipulate or interrogate data to provide adequate reports, statistical or predictive analysis of risks for early intervention support and targeted prevention measures;
- relies on manual manipulation of raw data extracted from the system which is therefore limited in its potential for human error, its untimeliness and inaccessibility, and in the necessary qualifications that are placed on the manual analysis;
- provides inadequate access to the CMC to oversight data because it is only available as view access on one single stand alone computer at the CMC offices;
- does not provide regional access for managing complaints or to statistical analysis and trend information for early warning and profiling;
- is expensive to maintain and operate because it is based on an Oracle database that is not supported by the QPS therefore requiring contractor support; and
- involves double handling and administrative burdens in the forms involved in the tasking system although QPS has identified that there may be some scope in the short term to redesign the inputs involved.

The QPS aims to achieve an alternative solution by designing a new system that enhances the existing QPRIME¹⁹⁶ system used for QPS operations. The replacement of the current complaint management system was proposed as part of the original *Information Strategic Plan 2001-2010*. In 2004, the Project Team identified Niche Technology Inc. as providing the best match to business requirements to replace multiple operational policing systems into one fully integrated solution. This was ultimately to become QPRIME. A new complaint management system was included in what was known as Phase 3 of the QPRIME Project, however, this phase never proceeded, and the costs and disbenefits of the current system have continued.

The Discipline and Complaints Management System (DCMS) project was established in early 2009 under the direction of a project board of management including QPS and CMC representatives.

The QPRIME enhancement concept has considerable merit in incorporating complaints management and integrated analytical capability as part of core business and with similar tasking in the main QPS information technology system.

The need for a new system is urgent and has been pending for a number of years already. However, subject to board of management agreement and business case approval, there are still procurement processes and associated timeframes ahead including the potential for complications and further extended timeframes in delivering an ICT solution.

This Review does not profess to have any capacity to comment on the merits of the business case, but observes that the current system is a major obstacle to a simple, effective, transparent and strong police complaints model.

¹⁹⁶ Queensland Police Records and Information Management Exchange (QPRIME)

Implementation of a new ICT solution is urgent in recognition of the primacy of its enabler role in the new police complaints, discipline and misconduct system as recommended in this Review. The DCMS project should ensure that the assessment criteria used in making the business case for the best ICT solution duly weights a measure of timeliness.

In the interim, the Review recommends that the QPS and the CMC consider additional immediate measures to minimise as far as possible the current limitations on the unrestricted, full and 'real-time' information access for the CMC of the QPS complaints management data (e.g. additional hardware with remote access for the CMC, maximising utility of existing systems). Current arrangements relying on one stand alone computer at the CMC offices and weekly provision of hardcopy data printouts are unsatisfactory and present blockages to efficient and effective essential information communications with the oversight body.

RECOMMENDATION 30:

It is recommended that-

- a) the Queensland Government, and the QPS, accord strategic and operational priority to the consideration and implementation of a new discipline and complaints management information technology system that responds to the urgent need for improvements in accessibility, integration and functionality to support a more timely and effective police complaints, discipline and misconduct system; and
- b) in the interim, the QPS and the CMC implement additional immediate measures to improve real-time information access for the CMC to QPS complaints management data.

6.0 TRANSPARENT AND STRONG

*A discipline system is **transparent** if the validity of its processes and outcomes is self-evident.*

*It takes organisational will and action to sustain a **strong** discipline system.¹⁹⁷*

6.1 Sanctions

6.1.1 Transparency

Last year, the QPS established a comparative sanctions database to inform fair and consistent decision-making as to sanctions. The database is available to PPMs who assist prescribed officers with sanction decisions. Draft user guidelines developed by the QPS are currently under consideration with a view to making the database a more broadly available sanctions database for the organisation. Also, the viability of intranet publishing of de-identified disciplinary outcomes in the form of case studies focusing on topical issues is being examined by QPS.

This Review supports widening the accessibility of the database and considers that internet not just intranet publication should be considered under the 'push model' of the Right to Information reforms. Further, formal disciplinary decisions on substantiated complaints where a sanction of demotion or dismissal was determined should be published on the QPS website. Other professional and occupational groups publish disciplinary decisions (with appropriate protection afforded privacy), e.g. the *Queensland Discipline Register* of barristers and solicitors published by the Legal Services Commission.

Consistent with the *remedial* intent and structure of a *new* Police Complaints and Professional Standards Model (Table 2, p. 57), this Review recommends that prospectively, formal decisions (with appropriate protection afforded privacy) and sanctions database information on the Formal Intervention matters (that involve conduct attracting the highest range of sanctions: demotion or dismissal) should be published on the QPS website.

Publication of indicative sanctions data and decisions on substantiated Formal Intervention matters (of demotion or dismissal) offers more than precedent value in informing fair and consistent decisions. Transparency enables accountability. Transparency of decision-making should be a keystone feature in a system that seeks to promote public confidence,¹⁹⁸ and seeks to accord with community expectations.

¹⁹⁷ 'Transparent' and 'strong' are two of the four essential characteristics of a model police complaints system: CMC Report, pp. 15-16.

¹⁹⁸ Terms of Reference at Appendix B.

De-identifying personal information that would otherwise breach privacy considerations¹⁹⁹ does not devalue the exercise in making the balance of the data available. Precedent utility is a guide, not prescriptive, so deletion of privacy details involved in mitigating circumstances for example does not mean that the balance of the information offers no precedent value. Sharing the information also will have other benefits beyond informing prospective decision-makers of like matters.

Members of the QPS would be provided with their own easily accessible reckoning with the conduct and consequences in their workforce. The public and the media are supported in making an informed view of the whole, rather than managed access to individual case details from time to time. Academic researchers in the ethics, criminal justice and other interested fields can apply their skills in analysing the data and contributing to public debate and public policy development, relevantly for sanctions and decisions information this may include analytic contribution in the areas of prevention and early intervention such as with predictive profiling and indicators. As the Queensland Right to Information Report which led to the substantial freedom of information reforms in Queensland contended in favour of a smart and creative commons of information and policy potential,

The creative thought processes, skills, experience, time, budgets, interests and innovative effort of non-government players collaborate in often unpredictably positive ways delivering better social, economic, environmental and even government outcomes. Such sits squarely within the frame of the Government's Smart State ambition.²⁰⁰

The *Right to Information Act 2009* confers Parliament's intention for a '*pro-disclosure bias*' in the administration of the Act in respect of government information, unless disclosure would, on balance, be *contrary* to the public interest.²⁰¹

RECOMMENDATION 31:

It is recommended that, subject to amendments for privacy requirements, the QPS develop a report within the new Discipline and Complaints Management (IT) System that allows the publication of disciplinary information concerning decisions under the new police complaints and discipline system of substantiated matters involving a sanction of a reduction in rank or dismissal, on the QPS Bulletin Board and external QPS website.

RECOMMENDATION 32:

It is recommended that intranet and internet publication of de-identified disciplinary outcomes (including below sanction level of demotion) in the form of case studies focusing on topical issues be supported.

¹⁹⁹ See *Information Privacy Act 2009*.

²⁰⁰ FOI Independent Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act*, Queensland Government, (2008), p. 32.

²⁰¹ *Right to Information Act 2009*, ss. 23, 39, 47, 49, 132.

In 2009, the QPS published a drink driving matrix to inform its members of the QPS expectations and the unambiguous consequences of drink driving. Consultations during this Review, and focus group participants,²⁰² praised the successful initiative. The Review considers that the QPS should identify other such matrices concerning conduct deserving dismissal for similar high profile release, in an ongoing prevention communication program. Such ongoing communication in clear and unambiguous terms would support the Formal Intervention focus on high punitive consequences.

RECOMMENDATION 33:

It is recommended that the QPS continues a prevention program that, through using matrices (such as the drink driving matrix) or other concise tools, communicates to members clearly and unambiguously the consequences of serious misconduct.

6.1.2 Range of sanctions and decision-makers

Consultations during this Review, and Focus Groups, supported a broader range of sanctions available for the consideration of a broader range of prescribed officers²⁰³ (i.e. decision-makers on liability and penalty).

The 2007 review of Victorian police discipline recommended the opposite approach by removing intermediate sanctions for less serious misconduct in favour of '*assertive management support*' that sets performance expectations to improve behaviour.²⁰⁴

This Review recommends a similar policy orientation with a new police complaints model that structures a remedial emphasis instead of a focus on punishment (see p. 55-59) with the result that more mid-range matters will be managed as Remedial Intervention instead of a punitive path under Formal Intervention for show cause and sanction.

However, this Review's model makes a fundamental departure from the Victorian review in seeking to strike a dynamic balance between remedial and punitive objectives in the intermediate range by accommodating the flexibility for management, as an option of last resort, to require an officer to show cause for that misconduct, as well as additional appropriate remedial intervention matters. This would be in circumstances where the police officer has engaged in misconduct previously, and has already received relevant remedial intervention but has failed unreasonably to meet the expectation that the misconduct should not recur. Or, in circumstances where the misconduct could not possibly have been ignorant, mistaken, accidental, reckless, or 'plain stupid', but was in flagrant²⁰⁵ disregard of the officer's responsibilities. Yet, the conduct was not deserving of dismissal and escalation to Formal Intervention. A last resort option for the intermediate range, enables management to add punitive consequences to prior attempts of remedial only

²⁰² Focus Group Report, p. 31.

²⁰³ 'Prescribed officer' is defined in the *Police Service (Discipline) Regulations 1990*, r. 4.

²⁰⁴ Office of Police Integrity, op. cit., pp. 3, 30.

²⁰⁵ 'conspicuously offensive', < <http://www.merriam-webster.com/dictionary/flagrant>>

intervention (or an offensive flouting of responsibilities) before moving the officer to Formal Intervention and prospective dismissal should the pattern of misconduct continue unabated.²⁰⁶

Accordingly, this Review recommends a broadening of the range of sanctions and the range of prescribed officers. In particular, the Review considers that the gap between two penalty points (currently \$200)²⁰⁷ and a pay point reduction (which necessarily includes a superannuation penalty) is too wide. Also, two penalty units is too low for the intermediate matters of punitive concern under the new model. The legislation should be amended to replace the provision for two penalty units with a range of ten, thirty and fifty penalty units. When this sanction is applied, the corresponding rate of regular deduction from the officer's salary must be commensurate with what is reasonable without losing its intent of penalty. For example, a ten penalty unit sanction deducted at the rate of \$10 per fortnight unreasonably diminishes the deterrent effect of the penalty.²⁰⁸

The current provision for a disciplinary sanction of reprimand would be repealed consistent with the remedial intent and action of the new system which would replace a formal punitive sanction of reprimand with a non-reviewable right of remedial intervention that includes guidance, training, conduct management and other rehabilitative programs.

Management action for Remedial Intervention matters should be recorded on a member's personnel file and the files should be provided to an officer in charge when the member transfers or moves on promotion or transfer.

This Review notes previous concerns in relation to the delegation of responsibility for sanctioning as well as the suggestions²⁰⁹ that there is more scope to delegate responsibility for sanctions to Superintendents and Chief Superintendents. This Review considers that sanctioning should occur at Inspector level and above, as suggested in Table 9.

This Review notes that the CMC suggested alternative penalty units ranging from 5, 15 to 25 penalty units. However, as the CMC explained a single pay point reduction can be up to \$2,500 which for an officer at the bottom of the pay scale, can be a financial penalty in excess of \$10,000 by the time they are at the top of the pay scale.²¹⁰ Thus, Table 9 recommends the maximum penalty unit at 50, which at \$5,000 provides more of a spread in sanction options to minimise the gap between penalty units and pay point reductions.

²⁰⁶ *Police Act 1990 (NSW)* s. 173(2),(3) - Commissioner may order sanctions be taken with a required remedial performance program.

²⁰⁷ *Penalties and Sentences Act 1992*.

²⁰⁸ See also CMC report, p. 78.

²⁰⁹ e.g. Focus Group Report, p. 31.

²¹⁰ CMC Report, p. 77.

Table 9 : Disciplinary sanctions and authorities

Rank	Impose Penalty Units			Reduce Pay Point		Demote rank/class	Dismissal
	10	30	50	Up to 2 pay points	To any pay point		
Inspector	•						
Superintendent	•	•	•	•			
Chief Superintendent	•	•	•	•	•		
Assistant Commissioner	•	•	•	•	•	•	
Deputy Commissioner	•	•	•	•	•	•	•
Commissioner	•	•	•	•	•	•	•

* Forfeiture or deferment of a salary increment or increase (*Police Service Administration Act 1990, s. 7.4(3); Police Service Discipline Regulations 1990, r.10*) is not favoured as its punitive value is less responsive in the short term, contrary to the intention of pursuing a sanction for the intermediate range.

The CMC also suggested an additional disciplinary sanction of 'any other discipline considered warranted' available to Deputy Commissioners and the Commissioner,²¹¹ which this Review also supports.

This Review notes that one of the chokepoints observed by the CMC in its *Setting the Standard* report²¹² was delay caused by determining a suitable prescribed officer (according to possible sanction). The scaled approach and amended sanctions in Table 9 should cause less concern, and provides an intermediate sanctioning role for Superintendents and Chief Superintendents.

The CMC Report, *Setting the Standard*, also recommended that legislative provision be made for a Commissioner's loss of confidence power to dismiss an officer.²¹³ That authority does not need to be triggered by the complaints system and is beyond the remit of this Review. However, for the sake of completeness, this Review notes that this additional measure to the sanctions above attaches to the Commissioner's authority only and would not be delegated.

This Review notes that in current sanctioning arrangements, the prescribed officer is not provided with an indicative range of sanctions as a matter of course with the investigation report. To save a senior officer time in calling for an indicative range either before or after consideration of the investigation report, this Review recommends that the PPM consult the indicative sanctions database and liaise with the ESC, and/or the CMC, as may be considered necessary for advice on an indicative range to include in the brief of matters provided to the prescribed officer for a determination.

²¹¹ CMC Report, p. 37, 76.

²¹² CMC Report, p. 56.

²¹³ CMC Report, recommendation 11, p. 97.

RECOMMENDATION 34:

It is recommended that except in cases where demotion or dismissal is appropriate, a prescribed officer should generally deal with the matter through Remedial Intervention unless there are circumstances, which in the opinion of the prescribed officer (in consultation with the ESC) warrant a disciplinary sanction.

RECOMMENDATION 35:

It is recommended that the available range of disciplinary sanctions be amended as detailed in Table 9 (at p. 107), which includes repeal of the sanction of reprimand, and replacement of the provision for two penalty units with a range of penalty units (of 10, 30 and 50), and that legislation be amended accordingly.

RECOMMENDATION 36:

It is recommended that the QPS make amendments to policy and procedures to ensure management action and Remedial Intervention is recorded on a member's personnel file and that the files are provided to an officer in charge when the member transfers or moves on promotion.

RECOMMENDATION 37:

It is recommended that the prescribed officers authorised to determine the amended range of sanctions, namely Inspectors and above as detailed in Table 9 (at p. 107) be approved, and that legislation and delegated authorities be amended as necessary.

RECOMMENDATION 38:

It is recommended that an indicative range of sanctions be provided to the prescribed officer with the investigation report as a matter of course.

6.1.3 Suspension of sanctions

Regulation 12 of the *Police Service (Discipline) Regulations 1990* provides that,

... a prescribed officer may suspend the effect of the disciplinary sanction subject to the officer upon whom the disciplinary sanction is being imposed agreeing to-

- perform voluntary community service; or
- undergo voluntary counselling, treatment or some other program designed to correct or rehabilitate;

designated by the prescribed officer and which is relevant to the act or omission which led to the disciplinary action being taken.

This Review disagrees that a disciplinary sanction and voluntary counselling and other rehabilitative measures should be so disconnected in the police complaints system as to require the imposition of time and procedure involved in formal investigation and sanctioning *before* the subject officer is invited to agree to remedial action in exchange for a suspended sanction

(effectively a withdrawal of penalty in exchange for participation in remediation).

This process is in the wrong order.

For misconduct where dismissal is not indicated, the *first* (not last) response of a disciplinary system seeking to achieve its *purpose* as expressed in regulation 3 should be in remedial intervention, integrated with performance management and conduct improvement processes, and other managerial measures. These interventions should be in addition, and complementary with, the preserved right of a superior officer to '*chastise or correct, by way of guidance, inappropriate acts, omissions or failures in the performance of a subordinate officers' duty*'.²¹⁴ Regulation 3 sets out the purpose of discipline,

3 Object

The object of these regulations is to—

- (a) provide for a system of guiding, correcting, chastising and disciplining subordinate officers; and
- (b) ensure the appropriate standards of discipline within the Queensland Police Service are maintained so as—
 - (i) to protect the public; and
 - (ii) to uphold ethical standards within the Queensland Police Service; and
 - (iii) to promote and maintain public confidence in the Queensland Police Service.²¹⁵

A 'first-in-line' determination of sanction before remedial intervention results in lost opportunities for a learning individual, a learning organisation, and for restorative justice for complainants because of the time lost in resolving a position on sanction first.

Liability and sanction is not required before management interventions. If a police complaint is not substantiated through formal investigation and a show cause (or disciplinary hearing) process, that does not prejudice performance management or remedial interventions because although they are complementary strategies they do not require proof on the balance of probabilities.

The *New South Wales Police Act 1990*²¹⁶ provides that the Commissioner may order sanctions in respect of an officer whom the Commissioner has required to participate in a remedial performance program and despite such participation, the officer's performance is still unsatisfactory. The sanctions proceed by a show cause procedure.

In relation to suspended sanctions, this Review agrees with the CMC that the power to suspend a sanction of dismissal should be removed.²¹⁷ However,

²¹⁴ *Police Service (Discipline) Regulations 1990*, r. 11.

²¹⁵ *Police Service (Discipline) Regulations 1990*.

²¹⁶ *Police Act 1990 (NSW)*, s. 173.

²¹⁷ CMC Report, recommendation 8, p. 80.

provided that mitigating circumstances are not taken into consideration in the determination of sanction, there is reason to support suspension of sanctions other than dismissal because the higher sanction reinforces to the officer the serious consequences of the misconduct but enables mitigating circumstances to be accounted for in suspending the sanction. Importantly, the suspended sanction remains on the officer's record.

If the power to suspend a sanction was removed in respect of matters other than dismissal, it may have the unintended consequence of effecting a disincentive for a prescribed officer to opt in the potential for a punitive measure on a proper consideration of the circumstances.

Also, use of the suspension power should be subject to scrutiny by the ESC in the first instance.

When mitigating circumstances likely to justify suspension of sanction are known in advance (at the initial assessment stage), management should determine that Remedial Intervention is the appropriate treatment without the need to pursue formal determination of liability and sanction.

The Queensland Police Union of Employees submitted to this Review that it appreciates the concern in relation to the expungement of the disciplinary record at the conclusion of the suspension period²¹⁸ and that the QPUE has '*no difficulty with the proposition that the expungement of a disciplinary decision need not automatically follow from the successful completion of a suspension period*'.²¹⁹

The Review considers that a suspended disciplinary decision should never be expunged from the officer's record; it should remain so future misconduct can be seen in context. Under the new Police Complaints and Professional Standards Model (see Table 2, p. 57), genuine mistakes or mitigating circumstances are managed directly through Remedial Intervention, such that the incidence of suspension of sanctions and circumstances that could warrant expungement at the end of the suspension period will be less likely. Where Formal Intervention is warranted beyond a remedial response then the conduct, or a pattern of conduct that has opted in the punitive element, is serious notwithstanding the consideration that determined suspension of the sanction.

RECOMMENDATION 39:

It is recommended that the *Police Service (Discipline) Regulations 1990* (and related policies and procedures manuals) be amended to permit remedial intervention, and other management initiatives concerned with the performance and conduct of an officer, either before, after or contemporaneously with formal disciplinary sanction processes (including investigations).

²¹⁸ Under *Police Service (Discipline) Regulations 1990*, r. 12(2).

²¹⁹ QPUE Submission, op. cit., p. 22.

RECOMMENDATION 40:

It is recommended that the power to suspend a sanction of dismissal, be removed.

RECOMMENDATION 41:

It is recommended that the power to suspend a sanction other than dismissal be retained and used only where there are circumstances justifying imposition of penalty but mitigating circumstances warrant suspension.

in respect of sanctions other than dismissal that-

- a) the legislation be amended, to ensure-
- the presumption is against suspending a sanction;
 - sanctions are suspended only where particular circumstances justify suspending the sanction;
 - relevant mitigating factors are not first taken into account in the determination of sanctioning; and
- b) the ESC subjects the frequency and appropriateness of the use of the suspension power to scrutiny.

RECOMMENDATION 42:

It is recommended that suspended disciplinary decisions should never be expunged from an officer's record.

6.1.4 Stand downs and suspensions

On 2 June 2009 officer was involved in a violent arrest of an offender, including an offence for spitting on the officer. A complaint was received concerning excessive force in the arrest. Prior to the end of 2009 the officer was interviewed and gave a full account concerning his use of force options and decision-making. The actual facts were not in dispute as there was CCTV footage of the arrest. On 31 March 2011 the officer, having heard nothing further about the matter since being interviewed in 2009, was stood down from duty. He had (reasonably) assumed the matter was over when he hadn't heard for over 15 months. Now, having worked operationally ever since the incident, and with no further complaints made against him, he was now, somehow, been judged unfit to continue operationally.²²⁰

The Queensland Police Union of Employees submitted this recent example to reinforce a '*growing concern*' that stand downs and suspensions are being used as part of a disciplinary response and not as a discretionary management decision under section 6.1 of the *Police Service Administration Act 1990*. The Union continued,

... stand downs should be imposed only where an officer is thought incapable of satisfactorily discharging their duties. Where the misconduct cannot be said to impact on the officer's capacity to

²²⁰ QPUE Submission, op. cit., p. 29.

perform (as with the SERT officers [see p. *]), no stand down should follow.

Suspensions should only be imposed where the community would reasonably require the officer to cease actively serving as an officer. One would think those instances would be rare, and would be limited to allegations of very serious conduct where the prospect of dismissal is very real.

It is also objectionable that in practice, an officer is not heard before such a decision is made. Furthermore, the default position for suspensions is that they proceed without pay. Whilst the Commissioner can decide otherwise, the invariable practice is to suspend without pay. That is a position not generally suffered by other public servants who are suspended and it should not be the norm for police officers either.²²¹

Suspensions and stand downs do not form part of the available sanctions currently, but are a necessary provision to manage workplaces and staff, and promote public confidence.

The current power to suspend²²² is broader than that available in respect of the wider Queensland public service,²²³ and in other police services²²⁴ because of its discretion to suspend without pay, without a right of notice or an opportunity to be heard. There are no time limits on the stand down or suspend powers. In Victoria, if the Commissioner has not charged a suspended (or stood down) member within three months of the suspension (or stand down), the suspension must be withdrawn unless the Chairperson of the Appeals Board approves an extension of time.²²⁵ The QPUE suggests an initial non-reviewable stand down or suspension period of 14 days (with pay), after which a fresh decision (reviewable to QCAT) must then be made.²²⁶

Under the existing legislation, the Commissioner for Police Service Reviews can review a suspension or standing down decision and make recommendations to the QPS.²²⁷

There are a range of initiatives recommended in this Review which are directed at the excessive timeframes, non-progress reporting, punitive approach illustrated in the Union's example above. In addition, a procedurally fair requirement consistent with other precedents to give a police officer an

²²¹ QPUE Submission, op. cit., p. 30.

²²² *Police Service Administration Act 1990*, s.6.1.

²²³ *Public Service Act 2008*, ss. 189, 190(2), 191, 192 - natural justice is not required if suspension on normal pay; suspension of employment requires notice. *Discipline Guidelines* (2009), pp.5-6.

²²⁴ e.g. *Police Regulation Act 1958 (Vic.)*, s. 68A - pending dismissal, suspension with pay, s.70(2)(c) suspend with pay during investigation.

²²⁵ *Police Regulation Act 1958 (Vic.)*, s. 70.

²²⁶ QPUE Submission, op. cit., p. 30.

²²⁷ *Police Service Administration Act 1990*, s. 9.3.

opportunity to respond to why suspension should be without pay (without delaying the immediacy of the suspension) should occur-

- natural justice is not required if suspension is on normal pay; or
- if suspension without pay is proposed, then a 14 day show cause is required before remuneration is affected; and
- stand downs and suspensions periods be reviewed regularly²²⁸, but if no disciplinary charges are brought within 90 days²²⁹ of the decision to stand down or suspend then the suspension or stand down (with or without pay) is reviewable by the QCAT.

RECOMMENDATION 43:

It is recommended that the *Police Service Administration Act 1990* be amended to provide that if a suspension without pay is proposed, then a 14 day show cause is required.

RECOMMENDATION 44:

It is recommended that the *Police Service Administration Act 1990* be amended to provide that if a disciplinary charge is not brought against the subject officer within 90 days of the decision to stand down or suspend, then the decision to stand down or suspend is reviewable by the QCAT.

6.2 Civilian oversight and review

'...oversight is not about bad cops, but about good government'²³⁰

Civilian oversight opens the police complaints system to independent scrutiny. The CMC (with standing royal commission powers), QCAT (an independent merits review tribunal), the Parliamentary Crime and Misconduct Committee and its Commissioner (guarding the guardian), and the Commissioner for Police Service Reviews (with powers of review and recommendation) are the various levers external to the QPS that collectively account for the police integrity system.

During Review consultations, potential for an additional civilian capacity to contribute to transparency and accountability was considered. Civilian involvement currently occurs in governance mechanisms such as the Operational Performance Reviews.

RECOMMENDATION 45:

It is recommended that the QPS give further consideration to appropriate opportunities for including a civilian capacity in QPS governance mechanisms or quality control committees.

²²⁸ Currently, reviewed ordinarily by the Deputy Commissioners every 2 to 4 weeks.

²²⁹ Benchmarked timeframes involve 90 days for investigations. A review of a suspension or stand down is available (currently) within the 90 days by the Commissioner for Police Service Reviews

²³⁰ Attard, B., 'Oversight of Law Enforcement is Beneficial and Needed - Both Inside and Out', 30 *Pace Law Review*, 2010, pp. 1548- 1561, p. 1548, references omitted.

The Commissioner for Police Service Reviews receives appeals against decisions of breach of discipline²³¹, whereas appeals against misconduct decisions go to the QCAT. The Commissioner for Police Service Reviews only has powers of recommendation. The Queensland Union of Employees submitted that its processes *'are not particularly prompt or efficient'* and it fails to provide the *'quick and simple resolution to minor matters that may have once been hoped'*.²³² The Union recommended the complete abolition of the Commissioner for Police Service Reviews with all reviews to QCAT instead.

The recommendations in this Review that prefer remedial and management intervention in lieu of formal investigation and sanctioning will significantly reduce the number of breach of discipline determinations for review. However, in the limited instances where a determination is made there is no reason of volume or process that would indicate that review to the Commissioner should be preferred. Given that any determinations under the new model on liability and sanction in respect of 'breach of discipline' matters would be exceptional and the most serious in that category, review to QCAT would be appropriate and would streamline existing appeal arrangements in any event by providing a single review point.

The Commissioner for Police Service Reviews has review powers additional to breach of discipline matters and those matters are beyond our remit on which to make recommendations.

RECOMMENDATION 46:

It is recommended that the legislation be amended to include review of action against an officer for breach of discipline in the QCAT's jurisdiction, instead of the current review available by a Commissioner for Police Service Reviews.

6.3 Accountability

A transparent and accountable police complaints system publishes information and data to give an account of its performance.

Publication of system performance data and information is limited in the QPS annual report, notwithstanding the collection and measurement of a range of matters.²³³ The level of data reporting in both the annual reports of the QPS and the CMC has reduced over time.

A new and additional approach would better serve public confidence in how police conduct is meeting community expectations and what is being done when it does not.

A joint annual report that is dedicated to an account of the ethical health of the QPS through the Parliamentary Committee to the public of Queensland, is recommended. This report prepared from input by both the QPS and the

²³¹ *Police Service Administration Act 1990*, s.9.3.

²³² QPUE Submission, op. cit., p. 26.

²³³ e.g. Report on Government Services (ROGS) data.

CMC would include information on the discipline and misconduct system to provide a comprehensive and accessible scorecard on an annual basis.

Such a specific annual report honours the public's need to know how the discipline system is performing and it serves to both *balance* reputational harm occasioned by reporting of individual incidents in the media with a *whole* accounting of performance against a prescribed range of matters. A range of matters should be a prescribed minimum in the report to ensure that over time the document retains its relevance for fair and comparative scrutiny.

The ethical health report can be a learning tool for the organisation as well, through including green light, amber light and red light scenarios of real events, appropriately de-identified.

By the requirement of a joint report, the police account is balanced by the input of the police oversight body's response and the CMC's account of its oversight and capacity building activities and performance for the subject year.

The QPS would take lead responsibility in coordinating preparation of the report, in close consultation with the CMC. Each agency would prepare its own section, and would collaborate on any joint content. If there is disagreement on joint content or organisation of the report, the QPS view would prevail but the CMC would have exclusive right to include its own note of dissent in the report in addition to its own section.

Academic commentary notes that attempts to compare complaints statistics across jurisdictions proves to be a '*near impossible exercise*' because different approaches are used in compiling the statistics (and the '*time taken to finalise complaints is all but impossible to compare*').²³⁴ Although a comparison of *time taken* statistics within the one jurisdiction, provided the input variables are maintained, should be telling.

Linking effectiveness of investigations to substantiation rates is fraught because it does not account for the fact that,

... an overwhelming majority of complaints against police concern incidents which involve the complainant and a police officer... in circumstances where there are no independent witnesses to corroborate either party's account. Even if there are police witnesses the code of silence means that officers will nearly always support other police.²³⁵

It is said that substantiation rates relate more to the evidence available to prove or disprove allegations than it does to whether misconduct happened or

²³⁴ Lewis, C., *Complaints Against Police: The Politics of Reform*, Hawkins Press, 1999, p. 69. See also, Brown, AJ and Head, B., 'Consequences, Capacity and Coherence: An overall approach to integrity system assessment', *Promoting Integrity: evaluating and improving public institutions*, (2008), p. 288, 289.

²³⁵ Lewis op. cit., p. 70-71.

not. Also, an increase in the number of complaints received might indicate a rise in police misconduct, or a loss of faith in the civilian complaints systems.²³⁶

However, performance indicators are '*an inescapable part of accountability*' and while many indicators measure activity rather than achievement, they still provide an important picture of agency work and how resources are applied. Also, recommended in a sophisticated assessment of success,

Regular surveys of stakeholders will help establish performance benchmarks and a series of 'vital signs' about deterrence, rigour, impact, fairness, timeliness, appropriateness of outcomes, and stakeholder confidence. Regular case auditing will add another dimension of independent expert review. Without such measures, there is no reliable evidence that the core business is being done as efficiently and effectively as possible.²³⁷

The CMC is noted for its capacity and credibility in 'social science based' reporting which can add an important dimension to the special annual report.²³⁸

Following consultations, Appendix F recommends a prescribed minimum of matters to be included in this annual report dedicated to the priority of police serving the public with ethical conduct and professional standards.

RECOMMENDATION 47:

It is recommended that the QPS and the CMC provide to the public, through the Parliamentary Crime and Misconduct Committee, a joint annual report *Ethical Health Scorecard for QPS* that includes an integrated, *whole system* account of performance and activities in misconduct prevention, risk management and performance management, and the operation of the police complaints, discipline and misconduct system.

Complaint Receipting

The Review came to understand in the course of its consultations that when a member of the public came in to a police station and reported a suspicion of a criminal offence, the member of the public received a 'receipt' that the report had been made. Whereas, when a member of the public came in to a police station and reported suspected misconduct or made a complaint against police, the member of the public was not given a 'receipt' or any other tangible indication that the report was 'in the system' and going to be taken seriously.

There should be no distinction of principle as to why a report of alleged crime is receipted but a report of alleged misconduct is not - as they are both core business, to be dealt with equally seriously. It is not too tenuous to suggest

²³⁶ *ibid.* p. 71.

²³⁷ Prenzler and Lewis, 'Performance Indicators for Police Oversight Agencies', *Australian Journal of Public Administration*, 64(2), 2005, pp. 77-83, p. 82.

²³⁸ Lewis, *op. cit.*, quoted in Prenzler and Lewis, p. 82.

that public confidence in the accountability of a system would hesitate in circumstances where the current system can take weeks if not months to get back to a complainant, together with the complainant not receiving a 'receipt' of the complaint being made at the outset.

In practice, the reasons offered for the absence of a complainant's receipt for making a police complaint include that -

- some police complaints can be settled at the station, before needing to progress the report into the formal complaints system;
- to receipt all reports would artificially overinflate the numbers of complaints made;
- the police complaints IT system is old, inflexible and in need of replacement and would not readily support the provision of a 'receipt'; and
- it would just increase the bureaucracy of the system, and for the officers.

Alternatively, it can be argued that-

- receipting or giving a reference number to the complainant does not preclude management from dealing with the reported information and resolving the matter at the station without the need for a formal complaint;
- receipting need not be defined as 'complaints' in the present sense of the system and inflate comparative data. The receipt can simply be inserted as an initial first step to achieve for the member of the public a sense of recognition and trust that their information has been heard and will not be ignored, and to safeguard as a matter of fact that the report needs to be attended to one way or another. This is an important first step in taking on board principles of restorative justice - and that early confidence in being heard has the potential to give back public confidence; and
- the numbers involved in receipting as a new number (which is different to the current numbering of complaints) is useful data of itself in indicating the level of approaches made direct to police stations (which is a good thing as it can indicate a level of trust rather than going direct to the CMC). The new counting of receipts (which can only be more in number than the current level of complaints) recognises, and gives an account for, the effort and successes by police stations currently at the local level resolving issues of potential concern informally. However, the initiative is not contingent on the keeping of statistics. The point is to promote public confidence not increase data collection.; and
- the proposed transition of the police complaints IT system to the core business IT system, QPRIME, presents a timely opportunity to integrate a suitable design for receipting information.

Recommendation 45 addresses the concern for police complaints to be receipted on registering in the system in the same way as a person reporting a possible criminal offence is respected. However, this does not address the 'grass roots' public confidence opportunity in according a similar comfort and respect in acknowledgement of public information received even if it is yet to

be determined as a formal complaint justifying registration on the system. Recommendation 46 proposes this simple additional step. The written acknowledgement need only be simple and limited to date, time and officer attending, such as a 'print out' of the entry made in the logbook or similar. There is no need to layer the process with any additional assessment involved in acknowledgment, it is merely a reference of the fact of having received information.

RECOMMENDATION 48:

It is recommended that the QPS include as part of the IT solution for the discipline and misconduct system a receipting form to ensure that when a complaint has been assessed by a Commissioned Officer and entered onto the QPRIME system, an acknowledgement receipt is generated and provided to the complainant (either personally, by mail, email, sms).

RECOMMENDATION 49:

It is recommended that an additional step of acknowledging possible police complaints information for a member of the public attending at a local station should be adopted and included in the information technology transition from the current police complaints system to a QPRIME solution.

6.4 Leadership

A *strong* police complaints, discipline and misconduct system requires organisational leadership by the chief executives and the executive support teams of both the police and the police oversight bodies, as well as ethical leadership by all participants in the system to protect against the weakening effect of a '*lowest common denominator*' in performance, culture and integrity.

The imperative for quality leadership in the oft-quoted '*setting the tone from the top*', sending clear and unambiguous signals of what is expected of an organisation - and '*walking the talk*' - is absolute.

Accountability for leadership at all levels, including the executive and supervisors will galvanise a strong system.

...crucially, policing requires competent leaders who can lead confidently *at all levels* of the institution, which means we should not be mesmerised only by leadership at the top. Also, the main complaint of the lower ranks is that the bosses do not support them when tough decisions have to be taken and blame is allocated. With new accountability structures senior officers devolve responsibility but draw accountability upwards - that is, if there is a genuine culture of accountability where superiors cannot hide.²³⁹

A range of recommendations in this report support a strong system in terms of its leadership (such as Recommendations 2(a), 6, 7, 11, 12, 13, 20, 47, 50).

²³⁹ Punch, op. cit. p. 240.

6.5 Supervisors

*'The first-line of supervision is the first-line of anti-corruption.'*²⁴⁰

The argument that misconduct and corruption is an institutional, rather than an individual failure, prioritises leadership and quality supervision in the front line defence of a police organisation's ethics and professional standards, and in *leading* necessary organisational change.

Good supervision is clearly dependent on a number of variables such as recruitment, training and ratios of supervisors to ordinary ranks; but the pivotal one is the level of support the supervisor can expect from superiors. The more the supervisor feels isolated and abandoned by those above - either through sloth, indifference or fixation on managerial tasks - the more likely the supervisor will develop an indulgency pattern with the group. There is always group dynamics and in a squad an informal leader or a clique can influence and manipulate supervisors... There has also been at times the recruitment of a large cohort of young and inexperienced officers who were rapidly promoted to supervisory roles. But if frontline supervision is so vital - and that derives from the structural characteristics of policing with small units having high autonomy and facing important decisions in uncertain situations - then there has to be investment in the role. Supervision has to be seen as the front-line, cutting edge of operational leadership and there *has to be training for, and organisational support for, assertive and intrusive supervision...* Integrity, accountability and control of the primary processes begin at the 'coalface' with sound, self-confident and institutionally supported supervisors. (emphasis added)²⁴¹

Both *Dangerous Liaisons* (Operation Capri) and Operation Tesco highlighted failures of supervision in the QPS.

During Review consultations, there was a strong view that officers needed not to '*slide into*' but to '*step up*' to a supervisor's role, they '*need to take the responsibility not just the money*' [of a supervisor's role]. Specific training that was suggested as a pre-condition to the taking up of duty in a new role of supervision included a concentration on decision-making and judgment for themselves and others under their control to prepare them in how to prevent and deal with misconduct. Others in Review consultations emphasised that supervisor-specific scenario-based training of typical conflicts and challenges, and possible strategies, was critical. Both suggestions should form the basis of an induction training program for supervisors, as should management in Remedial Intervention, and alternative dispute resolution skilling.

²⁴⁰ quoted in Punch, op. cit., p. 240.

²⁴¹ Punch, op. cit., pp. 240-241.

The Focus Groups in 2010 reported a view that '*supervisors were not supported and adequately trained*' by the QPS.

There is clearly a quantum leap in terms of organisational expectations of a person making the move from Senior Constable to Sergeant. The Management Development Program (MDP) was also clearly not considered as providing appropriate 'on the ground' frontline competencies necessary for people to undertake a supervisory position. Many focus group participants stated they could not see how knowing how to footnote an assignment made them a better supervisor.²⁴²

In 2009-10, the QPS delivered a state-wide training program to 4,430 supervisors and plain clothes personnel that was designed specifically in response to concerns raised in the *Dangerous Liaisons* CMC report , including reflective workshops on ethical leadership and '*vigilance in monitoring*' others' behaviours. The QPS is also currently developing a 'Managing People and Performance' training module which will include ethical obligations and considerations and conflict and performance management and dilemmas associated with 'managing mates'.²⁴³ This development of supervisors' training needs to progress as an organisational strategic and budgetary priority; and be delivered on an ongoing basis as mandatory training.

The capacity building roles of both a centralised command such as the ESC, (in concert with the human resource management and training line areas of the department) and a police civilian oversight body such as the CMC, are key to supporting the organisational needs of supervisors.

Under the legislation for NSW police, it is the duty of the Commissioner to inquire into and have regard to the integrity of an officer before selection into an eligibility program for a rank or grade, or promotion of a non-executive police officer. For this purpose, the Police Integrity Commission and the Professional Standards Command are required to furnish the Commissioner with a report on the basis of existing available information (without the need for special investigation or inquiry). The provision expressly provides that the Commissioner can change an appointment decision if information as to integrity alone forms the Commissioner's opinion that the person is not suitable for appointment and promotion.²⁴⁴

The Queensland legislation does not contain a similar express acknowledgement of the priority of integrity in promotion and in leadership, nor a clear process on how that needs to be considered. The Queensland *Police Service Administration Act 1990* includes '*integrity, diligence and good conduct*' of an officer in the meaning of 'merit' on which appointment is based.²⁴⁵

²⁴² Focus Group Report, p. 28.

²⁴³ QPS, 5 April 2011.

²⁴⁴ *Police Act 1990* (NSW), s. 71 ('Integrity Matters')

²⁴⁵ *Police Service Administration Act 1990*, s. 5.2.

In addition to the selection, recruitment and training of supervisors, supervisors should be supported by information as to the disciplinary and performance development history of new staff.²⁴⁶ Recommendations on the inadequate systems to enable this knowledge management in supervision, and integrated approach to conduct, performance and professional standards, are made in this report (pp. 68-69, 100-102, Recommendation 36, p. 108).

RECOMMENDATION 50:

It is recommended that the capacity of QPS supervisors to deliver front-line leadership and management of ethical and professional standards be significantly improved by the development of an *Integrated Supervisors' Capability Plan* that includes-

- a) **integrity screening** of officers before appointment or promotion to *supervisory* roles in the QPS (including a legislative framework based on the s.71 of the NSW *Police Act 1990* precedent);
- b) supervisor **induction** training courses to support officers 'stepping up' into supervisor roles and supervisor-specific scenario-based components to model meeting the challenges of ethical and performance contextualised dilemmas such as 'managing mates' and policing in volatile and/or remote environments;
- c) stand alone Supervisor Professional Standards and Strategies **Brief** (reviewed regularly) as an ongoing ready resource for supervisors *on-the-job*, which includes a plain English concise summary of the roles and responsibilities of a supervisor including their obligations in the performance management and police complaints systems (with links to the various sources, further reference materials and recommended contacts for further advice or guidance such as for avoiding legal or grievance issues); as well as a range of the typical ethical and performance management scenarios and the best choices involved;
- d) regular mandatory **refresher courses** in supervisor training that involves the ESC and the CMC in course delivery/attendance to facilitate identification of areas of concern, and where further training and development is needed, as an early alert of supervisory concerns before a complaints pattern, or workplace morale picture, emerges for possible detection later in the system;
- e) consideration of a supervisors **network or mentoring program**, supported by the ESC and the CMC; and
- f) support in **organisational knowledge management of staff** concerning the conduct improvement or professional standards development of staff through timely and regional access to an integrated quality performance management system and police complaints, discipline and misconduct information technology management system.

²⁴⁶ Focus Groups report concerns of limited information available. Focus Group Report, p. 29.

6.6 Prevention

Unprompted during Review consultations, general preventative measures were suggested as being critical to an effective and strong whole system for police complaints, discipline and misconduct-

- More pre-emptive communications with staff. The ESC publishes an *Ethics in Focus* series which informs members of themed scenarios based on real cases. Consultations encountered some uncertainty regarding the application of the new Code of Conduct to off-duty behaviour. Timely and periodic reminders that the QPS *Standard of Practice* in the Government's *Code of Conduct* does apply to off-duty conduct for police may assist ongoing clarity of obligations.

Media coverage of alleged misconduct matters or CMC Operations (e.g. Operation Tesco) might also present a constructive opportunity for the ESC to communicate with staff directly with a learning and factual emphasis on the issues canvassed publicly. This will help manage an informed message about misconduct lessons, protect the organisation by minimising rumour and strengthen workplace morale with an informed official reference of the facts

Victoria Police also produce conduct lifecycles or intervention maps of dismissed officers to illustrate to members how behaviours can escalate to misconduct and corruption. The *Learning the Lessons* bulletins of the Independent Police Complaints Commission in the United Kingdom were also favoured initiatives raised in consultations that would complement and extend existing efforts.

These initiatives, either in consultation with the CMC or in joint publication with the CMC, would enhance existing efforts and raise the profile further.

- Drug testing - *'drugs and alcohol are a symptom if not a cause of misconduct and are responsible for many off duty problem behaviours'*²⁴⁷

During consultations, some suggested that there should be targeted drug and alcohol testing, and that provisions such as that in New South Wales for a 'recall to duty' (i.e. when off duty, meaning *not* 'on call'), for the purposes of testing for prohibited drugs, should be introduced to warrant high professional standards and conduct, and protect the organisation.²⁴⁸

²⁴⁷ Feedback in Review consultations.

²⁴⁸ *Police Act 1990* (NSW), s. 211A(E),(F), (G).

Again, increased and targeted testing is not a new idea. It is understood that other police jurisdictions, the Australian Defence Force and even mining companies incorporate more rigorous drug and alcohol testing regimes. However, a greater level of testing will have resource implications and will need to be subject to decisions around a business case in the short term.

- More CMC training and presence in the regions in support of QPS efforts in preventing misconduct and corruption. The program of regional training provided by the Ombudsman in New South Wales was raised as a well-regarded model of regional interaction between police and its oversight body.

At the outset in ethical considerations, Focus Groups expressed concerns that a 'higher standard' of recruit vetting in selections and then training of recruits was needed to minimise ethical 'slippage' in the organisation. Suggested strategies from the Focus Groups included-

- identifying 'at risk' ethical traits founded upon accredited research/standards during psychological assessments and interview at recruitment selection and removing applicants from the process;
- recruit training programs that foster the identification of risk-taking behaviours, particularly as a precursor to more significant corrupt behaviours;
- linking information from the recruit training database (PRIMES) to the ESC databases (this evidently does not occur, thus limiting a 'cradle to grave' approach in terms of monitoring an officer's ethical behaviour and conduct from when they first join the Service); and
- a greater emphasis be placed on the 'Code of Conduct' and 'Code of Dress and Appearance' within the Queensland Police Service.²⁴⁹

RECOMMENDATION 51:

It is recommended that the ESC review its proactive communications and publication series-

- a) in consideration of a risks/needs analysis,
- b) in consultation with the CMC, the human resources management section of the department, and the executive and staff (e.g. sample or online survey),

to develop an integrated ethical conduct and professional standards communication strategy with staff, that further develop its publications plan and communication outputs to include additional leading practice techniques from other jurisdictions, timely reminders of ethical obligations, and to respond to the needs and interests of QPS staff. Adverse media coverage of misconduct matters should trigger an opportunity for the ESC to communicate key misconduct messages and facts on current issues with staff.

²⁴⁹ Focus Group Report, p. 21.

RECOMMENDATION 52:

It is recommended that in consultation with the CMC and relevant unions, a review and business case for targeted drug and alcohol testing consistent with developments of leading practice in other jurisdictions and occupations be conducted.

RECOMMENDATION 53:

It is recommended that the CMC, in consultation with the QPS and in consideration of a QPS/CMC training needs analysis, develop and implement a regional training program in the QPS for building QPS capacity in preventing and dealing with misconduct.

6.7 Code of conduct

The single *Code of Conduct for the Queensland Public Service* that came in effect in January 2011 applies to official duties but an agency's *Standard of Practice* that forms part of an agency's code of conduct can specify a higher standard of obligation. The QPS Standard of Practice provides for the higher obligation that the Code of Conduct and the Standard of Practice apply to *off duty* as well as official conduct. This is consistent with the 24/7 obligations made by a police officer on taking the oath of office.

Although there was no change to the substance and effect of the code of conduct pre-2011 as preserved in the Standard of Practice from 2011,²⁵⁰ confusion was raised during this Review's consultations as to whether the new code applied to off duty conduct because of the wording of the sector-wide code of conduct. Such confusion presents a risk and should be addressed quickly and directly through organisational communications with staff, with additional reinforcement of the message through the chain of command.

This clarification should be made as soon as possible and not be held pending negotiations and Government consideration of recommendation 1 of the CMC's *Setting the Standard* Report that concerns content development of the Standard of Practice.

RECOMMENDATION 54:

It is recommended that the off duty application of the new *Code of Conduct* and *Standard of Practice* for QPS officers be confirmed through the chain of command and in direct communications with staff as soon as possible.

6.8 Resources

A strong system needs adequate resourcing for its component parts.

This Review notes that the CMC recommended a review of the capacity and resources, staff retention and attraction strategies of the ESC to ensure

²⁵⁰ And confirmed by the same provisions of s.7.2 of the PSAA ('wherever and whenever occurring', whether 'on or off duty')

suitable numbers, skills mix and physical resources for its role.²⁵¹ The ESC has a central and critical role in a strong police complaints system and the promotion of ethical conduct and professional standards generally. Many recommendations in this Review concern the ESC and its core business. This Review supports the CMC's recommended review of ESC resourcing issues.

A reallocation of resources between the CMC and the QPS occurred as a consequence of the devolution policy enacted in the *Crime and Misconduct Act 2001*. As that comparative resources assessment was a decade ago, and in consideration of the evolution in devolution since together with comparative resourcing impacts that may arise from the implementation of recommendations in this Review, this Review recommends that the CMC's recommended review of the ESC should be partnered with a review of the numbers, skills mix and physical resourcing available to the misconduct function of the CMC.

As part of a resourcing review of the ESC and the misconduct area of the CMC, a strategy of increased joint investigations and cooperative resourcing (such as for matters involving 'time consuming and heavy legwork') should be implemented with a standing memorandum of understanding that enables timely and cooperative response to respective peakloads. A standing arrangement framed around a memorandum of understanding would better support a cooperative resourcing model than the decisions that are made on an ad hoc basis currently.

This Review understands that the availability of surveillance resourcing presents challenges for both the misconduct area of the CMC and the ESC as they queue 'second in line' to the needs of the crime functions in both agencies.

More than twenty years ago, Fitzgerald criticised the lack of capacity for surveillance in investigating police.²⁵²

The better availability of surveillance capability would sophisticate anti-corruption measures, streamline investigations and save resources accordingly. However, a surveillance unit dedicated for misconduct purposes (at the CMC, but available to ESC also as may be agreed) is an expensive proposition.

RECOMMENDATION 55:

It is recommended that a review of the resourcing numbers, skills mix and physical resources of the ESC and the misconduct function of the CMC be supported.

²⁵¹ Recommendation 5 of the CMC *Setting the Standard* Report (2010), p. 70.

²⁵² Fitzgerald report, p. 288.

RECOMMENDATION 56:

It is recommended that a memorandum of understanding be negotiated between the CMC and the QPS to facilitate a timely and cooperative joint resourcing model in support of respective peakloads in preventing and dealing with misconduct.

RECOMMENDATION 57:

It is recommended that a business case be developed and assessed for a surveillance capability at the CMC dedicated to the misconduct function (i.e. the ready availability of surveillance resources not in competition with the crime functions), and available to the ESC as may be agreed with the CMC.

7.0 RISKS, SUCCESS FACTORS AND CONCLUSIONS

This is the ninth external review of the police complaints, discipline and misconduct system since the Fitzgerald Inquiry which reported in 1989.²⁵³ It is the fourth external review in the last four years.

As the CMC reported in December 2010, although there have been significant improvements in the QPS discipline system since the Fitzgerald report, the system is *'still plagued by a number of the debilitating problems identified by Fitzgerald and again in subsequent reviews'*.²⁵⁴ Most of the findings of this report are contained in the last review's list of *'recurring themes and persistent problems'*.

In consultations, this Review invited stakeholders and administrators variously to reflect on what the *'top shelf issues for change were'* for them, or given all the reviews before and that the problems were already well-described, *'what could this Review recommend that would make any difference'*. Most nominated problems that already appear on the list of recurring themes and persistent problems such as excessive timeframes and adversarial processes.

But these can only be part of the solution because most have already had the imprimatur of several previous reviews recommending their priority focus and correction.

Others in this Review nominated the need for effective working relationships as the key to improvements, and some critiqued devolution down to local operational levels as a major process obstacle and a serious policy risk.

This Review agrees but adds that the devolution policy under the *Crime and Misconduct Act 2001* was fundamentally flawed in its implementation because although the legal responsibilities and rationale moved to police managing police, the legislative and procedural complaints system itself did not change from the *investigate and punish* model to a management intervention focus. (see pp. 55-59) Attempts to retro-fit a Project Verity model to a discipline and punishment framework failed partly because the policy fundamentals were still out of alignment. In the decade since devolution under the new Act, instead of a priority focus on performance management and building the capability of supervisors - to substantiate a rationale of management responsibility in devolution - the dominant organisational focus of the CMC and the QPS is still concerned with the quality of independent investigations in an unwinnable tension involving police investigating police.

²⁵³ See Appendix D, CMC Report, Setting the Standard, pp. 151-158: Public Sector Management Commission Review (1993), Bingham Review (1996), CJC Reviews (1993, 1994, 1997), Service Delivery and Performance Commission Review (2008), CMC: Project Grinspoon (2008), CMC Setting the Standard (2010). In addition to these eight reviews, the PCMC has reported on the system numerous times.

²⁵⁴ See list of *'recurring themes and persistent problems'* in CMC Setting the Standard Report, p. 10.

This Review concludes that the police complaints system should better align with policy objectives, manage risk, and incorporate solutions beyond discipline and punishment, such as a better consideration of the needs of complainants and restorative justice principles. A range of matters on the persistent problems list should resolve as a consequence of the design and procedural changes recommended in this report.

Change avoidance by the custodians of the current system should be a low risk because of the high level of frustration sustained by the current system and the *will* for it to improve. However, with the fractured working relationships there is a risk that some participants may limit their contribution out of a mistaken regard, or bias, that *'the other side'* needs to do the changing.

Designated *change agents* who are *accountable* for each organisation's contribution to change, and who have the authority and the respect to lead change in their organisations, and collaborate with the other, will help. The Assistant Commissioner, Misconduct (CMC) and the Assistant Commissioner, ESC (QPS) should fill these critical change roles with the high profile endorsement of their respective chief executive officers.

Resourcing concerns typically present risks in resistance to change. However, in this Review most recommendations concern doing business differently to save time and effort but still meet objectives. That is, resource savings after initial implementation phase are expected for both organisations as blockages, inefficiencies and duplication are ameliorated in a more efficient and effective system. Resources will be required for supervisor training and development but arguably these should be sourced to training budgets regardless of this Review. This Review supports training budget planning decisions as to their priority. Similarly, concerns that may arise in needing to keep police on the front line operationally should again be managed by reprioritising existing ex-front line commitments. Of course, the sooner supervisors meet skill competencies to manage subordinates' performance and manage remedial interventions for conduct concerns, the more time they will save with the benefits of an improved discipline system.

The resources required in building the capacity of PPM investigation teams is a short term reallocation in a mid-long term saving that will follow fewer, and less one size fits all, investigations conducted in a more certain, streamlined and efficient way.

Success will depend on political will to ensure a total alignment of legislation with policy and require organisations to adjust their procedures accordingly. Existing resources in comparatively minor areas in a large organisation will also need some realignment. Success will also depend on change leadership, effective supervision, and quality relationships. In addition, a coordinated approach, working with institutional norms, and an ongoing review capacity will anchor genuine success.

7.1 A coordinated approach

A repetitive conclusion during this Review was that the sheer number and range of contingent and interconnected factors involved in achieving a model police complaints system that is simple, effective, transparent and strong, will require a *critical mass of changes* made together to make a difference. A change plan developed in cooperation between both agencies should map the change elements and ensure their right sequencing and coordination with other change levers.

Critically for the QPS, the whole will be greater than the sum of the parts if changes occur in consultation and coordination with other key functions internally, including with human resources management and OPRs.

The Government's response to this Review will likely coordinate with its consideration of the CMC *Setting the Standard* report. This Review notes that the PCMC is also next due to conduct its three-year review of the CMC in 2012 which may assist in a timely overview of relevant first stages of implementation.

7.2 Institutional norming

A police organisation must be ready to change for change to be successful.²⁵⁵

The QPS is ready for a different experience. At this point in time, there is such a groundswell of dissatisfaction in the QPS with the current system that the rules need to catch up. No one in consultations with this Review wanted to prepare thousands of pages of evidence or hundreds of pages for a decision. But, they felt bound by rules and procedure to do so.

Rule books have been a major characteristic and tool of police departments as 'punishment oriented bureaucracies'.²⁵⁶

Structural change to the rule framework will resonate with police training and experience to work within structures and rules. The rules should incentivise due compliance by-

- ensuring paths of least resistance in procedure; and
- measuring outputs and outcomes, and making officers accountable for their contributions.

As an effective change program works with, not against, institutional norms, a risks management presentation of changes offers another opportunity to engage the workforce in the new design.

²⁵⁵ Chan, J. 'Police Culture', *A culture of corruption: changing an Australian Police Service*, Dixon, D., The Institute of Criminology Monograph Series, Hawkins Press, 1999, p. 136.

²⁵⁶ Dixon, D., 'The Normative Structure of Policing', *A Culture of Corruption: Changing an Australian Police Service*, The Institute of Criminology Monograph Series, Hawkins Press, (eds) Dixon, D, 1999.

Police officers are trained in the business of risk management, they do it everyday in the course of duty. This review of the existing misconduct and disciplinary system took a risk management approach and carefully considered whether costs were outweighing benefits in delivering a simple, effective, transparent and strong system. A number of changes result from a risks or cost and benefits analysis of whether a particular procedure or process could be justified. Engaging police in the implementation phase in the risk assessment approach in management should help power the intended changes; as well as act as a reminder that risks management is a *continuous responsibility*.

7.3 Sunsetting and ongoing review

An upfront commitment to review implementation of any change would serve to protect public confidence. Planning a review of implementation and the health of the system generally should avoid a public failing of trust that otherwise triggers an externally driven reform cycle.

Review of the system is supported by the following opportunities-

- CMC survey effort and research reports provide a well-resourced reference point for ongoing review of performance; and
- the 2010 Focus Group process proved an informative QPS self-reflection of the challenges and possible solutions, providing a useful model for revisiting that process on a comparative basis at suitable implementation stages to gauge the organisation's perspective and experience.

7.4 Public confidence -the last word

This Review concludes that the matters which influence public confidence the most in the Queensland police complaints, discipline and misconduct system may be summarised as-

- the concerns for impartiality and effectiveness in dealing with complaints when *'police investigate police'*;
- the clarity and quality of roles, responsibilities and relationships;
- regard for organisational values and ethical health; and
- whether the system is delivering quality outcomes.

'Police investigating police'

This Review considered that implementation of the devolution policy has gone too far to the local level, seriously compromising perceptions of independence in police complaints investigations. Review responses include recommendations for -

- a *Joint Assessment* process for the CMC and the QPS, including greater opportunity for joint investigations, and early setting of oversight expectations (Recommendation 13, p. 73);
- centralising devolved investigations away from local operational police up to the Professional Practice Managers (PPMs) responsible to

- regional Assistant Commissioners with Assistant PPMs and Ethical Standards Command support (Recommendation 19, p. 85);
- training and education to build organisational capacity in disciplinary (not crime) investigations and decision-making (Recommendation 23, p. 89).

Critical analysis in this Review also determines that implementation design of the devolution policy a decade ago was fundamentally flawed in failing to also amend other enabling legislation and procedures to align with the new policy's expectation for quicker remedial responses through effective police management (see pp. 22, 55-59). The devolution policy expected police to manage police (at more localised levels), but the legislative framework and procedures still required formal investigation and punishment as the primary response to all complaints, even of comparatively minor matters. This Review responds with a new model which fundamentally enables the devolved intent to remediate conduct whilst maintaining public confidence in a system that manages risks through appropriately scaled oversight, and when risk tolerances are breached it gives external independent capacity to redress the breach and protect the organisation, and the community it serves. Remedial/rehabilitative intervention should be risks and outcomes driven (dynamic) and not process-driven (redundant), with the flexibility to *opt in* punitive responses as the circumstances may require.

More effective oversight powers are recommended, whilst minimising duplication and pressures in overcooking the police complaints system.

In responding to the dimension of '*police investigating police*' concern that pertains to the secondment of QPS officers to the CMC as core CMC staff responsible for conducting police-related misconduct investigations, this Review recommends a *preferred* option of staffing the CMC's capacity for police investigations through current or former police from other jurisdictions rather than from the QPS, similar to the staffing models adopted in some of the other Australian jurisdictions. In the alternative, limited tenure of four years is recommended for QPS secondees at the CMC to minimise incumbency risks of capture or bias.

Clarity and quality of roles, responsibilities and relationships

The Queensland police discipline and misconduct system has been weakened by the nature of inter-agency relationships. Where public confidence bears witness to failing trust and cooperation within the system, the system cannot be strong. A learning-focussed culture cannot thrive: organisations become defensive, individual officers become risk averse and the system at various levels is eventually compromised. This Review recommends an external framework to support improvements in effective relationships and a range of strategies to improve structures, systems, policies and procedures to minimise the system's vulnerability to relationship problems, such as -

- joint Code of Conduct training for CMC and QPS officers (Recommendation 2, p. 48-49);
- strategies of limited tenure (Recommendation 3, p. 49-50);

- formal exchange of *Statements of Expectations and of Intent* between the Commissioner of Police and the Chairperson of the CMC (Recommendation 6, p. 50); and
- an exceptional circumstances role for the Parliamentary Crime and Misconduct Commissioner in support of the section 34 principles in the *Crime and Misconduct Act 2001*(Recommendation 7, p. 50).

Organisational Values and Ethical Health

This Review supports the proposition that organisational values and ethical health provide the touchstone for an organisation's integrity system. Accordingly, the Review makes recommendations supporting the critical role of leadership and supervisors, prevention, early intervention and self-reporting. Consideration of an organisational priority for transparency and accountability also leads this Review to recommend for example an *Ethical Health Scorecard* for the QPS jointly prepared by the CMC and the QPS; public receipting of complaints; and publication of disciplinary outcomes. (See Recommendations including, 13, 31, 32, pp. 73, 103-104).

Quality outcomes

If disciplinary and police complaints outcomes are not timely or fair, then public confidence is likely to be adversely affected. The design of the new *Police Complaints and Professional Standards* model²⁵⁷ advanced in chapters 5 and 6 is intended to produce quality outcomes through the model's simplicity, effectiveness, transparency and strength - and thereby promote public confidence.

²⁵⁷ See Tables 2 (p. 57), 4 (p. 61), 5 (p. 61), 6 (p. 76), and 7 (p. 78).

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APPENDIX A

List of Recommendations

Independent Review Panel Police Complaints, Discipline and Misconduct System

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RECOMMENDATION 1: (p. 35)

It is recommended that-

- a) a new staffing model be developed for the CMC's misconduct function of dealing with police complaints to improve public confidence in the structural independence of external oversight of police complaints and minimise police investigating police concerns; and
- b) the *Crime and Misconduct Act 2001* be amended to provide that for the misconduct function in the CMC insofar as it deals with complaints and allegations of misconduct against officers of the QPS-
 - i) current or former Queensland Police Service Officers cannot be appointed, employed, or otherwise engaged to the service of the CMC;
 - ii) the CMC may arrange for the secondment or engagement of a member of the Australian Federal Police; another State or Territory police service; or the police service of another country, as may be prescribed by regulation. Former police who have served at least 5 years in a meritorious capacity in those jurisdictions may also be engaged in the CMC;
 - iii) tenure should be limited to maximum of five years; and
 - iv) secondment of QPS officers for joint QPS/CMC investigations, or for case-specific tasking that requires QPS technical skills or capacities (e.g. forensic services, training) may be approved through an inter-agency memorandum of understanding.

RECOMMENDATION 2: (pp. 48-50)

It is recommended that-

- a) joint *Code of Conduct* training with CMC and ESC officers whose duties involve dealing with the other agency in the police complaints system be held as a matter of priority; and
- b) following *Code of Conduct* training, the QPS and the CMC jointly identify and resolve agreement on known contentious complaint handling practices (e.g. outcome advice letters, internal policies such as the use of coercive powers, and assessments).

RECOMMENDATION 3: (p. 49)

It is recommended that appropriate workforce management and transition plans be developed and implemented in the CMC and the QPS to give effect to the following strategies aimed at-

- minimising concerns of 'capture' or 'bias' from long periods of incumbency;
 - keeping workplaces fresh and alert, and protecting currency of skills;
 - increasing opportunities for more staff to gain experience in preventing and dealing with misconduct; and
 - supporting exchange of inter-agency experiences and perspectives:
- a) a strategy of limited tenure (of no more than four years in each role) for the following ESC roles: Assistant Commissioner, ESC; Chief Superintendent (Operations Coordinator); Superintendent, Internal Investigations Branch; State Coordinator, Internal Investigations Branch;
 - b) if Recommendation 1 (p. 35) is not approved, then a strategy of limited tenure (two years minimum, four years maximum) in respect of the QPS secondees in the Misconduct area of the CMC;

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- c) if Recommendation 1 is approved, then a strategy of limited tenure (two years minimum, four years maximum) in respect of the QPS secondees in the Misconduct area of the CMC who deal with non-police complaints;
- d) a strategy of recognising the service of QPS officers in ESC, Professional Practice Manager, and CMC roles as a relevant consideration in favour of promotional merit within the QPS, to assist in recruitment to the roles and to recognise the organisational priority of quality service in this function; and
- e) a strategy that identifies and facilitates suitable secondment opportunities, or staff exchange programs, for officers of the CMC Misconduct area (including for 'senior officers') into the Queensland public service departments and agencies and for officers of public sector agencies into the CMC.

RECOMMENDATION 4: (p. 49)

It is recommended that a statutory preservation of rights provision in respect of officers at the CMC below 'senior officer' level (similar to section 249 of the *Crime and Misconduct Act 2001*) be made, as well as any other necessary legislative amendments to ensure that the current employment entitlements for officers of the CMC or of public sector agencies are not diminished or otherwise adversely affected by participation in the secondment and staff exchange strategy (see recommendation 3(d) above).

RECOMMENDATION 5: (p. 50)

It is recommended that the ongoing need for a maximum tenure of 15 years for assistant commissioners and 'senior officers' of the CMC (as provided for under section 247(3A) of the *Crime and Misconduct Act 2001*), be referred by the responsible Minister to the PCMC for its consideration in monitoring the CMC's progress in succession planning and recruitment strategies in the next three year review of the CMC in 2012.

RECOMMENDATION 6: (p. 50)

It is recommended that the Commissioner of Police and the Chairperson of the CMC exchange formal *Statements of Expectations and of Intent* to affirm their respective roles and what their agencies can contribute in making a mutual commitment to promoting public confidence in the police complaints and misconduct system and in the principles of section 34 of the *Crime and Misconduct Act 2001*. This exchange should occur every three years or within six months after the change of a chief executive, whichever occurs first.

RECOMMENDATION 7: (p. 50)

It is recommended that the *Crime and Misconduct Act 2001* be amended to add an exceptional circumstances role for the Parliamentary Crime and Misconduct Commissioner in support of the section 34 principles.

RECOMMENDATION 8: (pp. 58-59)

It is recommended that a new Police Complaints and Professional Standards Model (as summarised in Table 2) be approved, and include-

- a) simplifying the typology of conduct from five to three categories (including removing the definition confusion concerning 'misconduct');
- b) focusing devolution on responsibility for managing conduct improvement in the *first* instance by way of remedial intervention or local management resolution for all matters that do not indicate a sanction of dismissal or demotion, but with the flexibility to opt in a punitive element in specified circumstances;

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- c) investigating and sanctioning when required by expedited procedures such as use of agreed facts and a show cause process on the papers, (with disciplinary hearings *only* in exceptional circumstances where the evidence is so complex or contested as to justify an oral hearing procedure); and
- d) actioning restorative justice principles as appropriate.

RECOMMENDATION 9: (pp. 65-66)

It is recommended that in lieu of any additional monitoring powers, legislation be amended to provide for-

- a) a new adjudicative power for the CMC to substitute a different disciplinary decision for new Category 1 and 2 matters (currently described as police misconduct and official misconduct)-
including where the original QPS decision-maker decided-
 - to impose a sanction the CMC considers inadequate; or
 - the allegation did not amount to misconduct; or
 - the allegation was not proved, but*excluding* those matters the subject of an oral disciplinary hearing procedure; or where a decision was made not to commence disciplinary proceedings with respect to a police misconduct allegation.
- b) the extinguishment of any right of review of the original QPS disciplinary decision upon the notice of a substituted decision by the CMC but those same rights of appeal for the subject officer to QCAT are preserved in respect of the substituted disciplinary decision made by the CMC, and would include a right of appeal to the QCAT for the QPS as employer.
- c) the possible delegation of the adjudicative power to the Chairperson of the CMC, or the Assistant Commissioner, Misconduct, only.
- d) a right of appeal for the CMC to QCAT for the new Category 2 and those Category 1 matters currently described as police misconduct, including ensuring a right of review for the CMC to QCAT of a decision to not commence a disciplinary proceeding with respect to a police misconduct allegation.
- e) specified timeframes for the new oversight powers, being-
 - (i) for the adjudicative power: the CMC's notice to the QPS and the subject officer must be provided within 14 days of receiving notice of a decision of disciplinary proceedings under the *Police Service Administration Act 1990*; and
 - (ii) for the QCAT review power: within 14 days of receiving notice of the decision.
- f) no power to assume responsibility for investigations (under section 47 of the *Crime and Misconduct Act 2001*) in respect of new Category 2 matters (currently described as Category B police misconduct matters but less those matters specified in an expanded section 40 direction under Recommendation 10 below).

RECOMMENDATION 10: (p. 68)

It is recommended that Category A misconduct matters be widened to include-

- unauthorised disclosure of confidential police information to a person involved or perceived to be involved in criminal activity and/or who is a member of an outlaw motorcycle gang or other criminal group;
- a complaint involving a death in custody;
- a complaint involving a serious injury in custody that is life-threatening;

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- a complaint involving an Indigenous person concerning an allegation of assault whilst in custody;
- offence of taking reprisal under the *Public Interest Disclosure Act 2010*;
- a complaint concerning a police officer who has a significant complaints history (to be defined by explanatory note); and
- a complaint that a police officer or QPS staff member investigating an alleged Category A misconduct complaint, has improperly failed to carry out their duties in that investigation.

RECOMMENDATION 11: (p. 70)

It is recommended that the current Performance Planning and Assessment (PPA) process-

- a) be delinked from paypoint progression in the QPS; and
- b) be replaced as a matter of priority by a quality strategic performance management system as recommended by the (former) Service Delivery and Performance Commission (2008, at recommendation 40), and with its design also accounting for use in remedial and early intervention processes.

RECOMMENDATION 12: (p. 71)

It is recommended that the executive performance agreements for the chief executive officers and their executives in the QPS and the CMC include a performance measure for meeting key benchmarked timeframes in the police complaints system.

RECOMMENDATION 13: (p. 73)

It is recommended that time savings be made at the initial assessment stage of complaints at the CMC through better information support for assessments and that a *Joint Assessment* process conducted in cooperation with the QPS as summarised in Appendix E, be approved.

RECOMMENDATION 14: (p. 79)

It is recommended that timeframe benchmarks in Tables 6, 7 and 8 be adopted, subject to review within three years.

RECOMMENDATION 15: (p. 79)

It is recommended that the QPS procedures and protocols be amended to permit CMC and ESC requests for evidence or information in support of their functions to be made *directly* to and from the ESC and the subject area at even a local level of the QPS.

RECOMMENDATION 16: (p. 79)

It is recommended that the section 40 Directions be amended to provide that the QPS can commence dealing with a matter notwithstanding its inclusion on the (expanded) Category A list, once 14 days has lapsed since the complaint was first provided to the CMC.

RECOMMENDATION 17: (p. 81)

It is recommended that the current situation where two discipline systems operate in the QPS (due to the Project Verity trials) should be remedied as soon as possible once further changes to the QPS system are determined.

RECOMMENDATION 18: (p. 81)

It is recommended that all policies and procedures documents concerned with the police complaints system should include an explanatory note that sets out the four essential principles: simple, effective, transparent and strong, as well as a *statement of system fundamentals* that must be taken into account in exercising discretions and in interpreting policies and procedures, and which include timeliness, risk management, restorative justice principles, remedial intent, and devolution never to the same local level.

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RECOMMENDATION 19: (p. 85)

It is recommended that complaints investigations should not be devolved to operational police at a local level but that centralising investigations at regional level under the management of PPMs and Assistant PPMs (and with greater ESC support), be approved.

RECOMMENDATION 20: (p. 86)

It is recommended that the critical capacity of the Professional Practice Managers to improve the timeliness, efficiency, effectiveness and thus economy of the police complaints system is recognised as a priority organisational strategy, and is supported by-

- a) quality selection and recruitment strategies, including,
 - (i) reassessment of the role of PPMs to indicate whether Superintendent or Inspector rank is appropriate under new arrangements and as an incentive for quality candidates;
 - (ii) a new Professional Standards Stream for appointment of Inspectors, which is in addition to the current General, Education, Legal and Investigation Streams;
 - (iii) entitlement for the ESC, and Assistant Commissioners in selection of PPMs, to have first selection rights from newly commissioned officers on a rotational turn basis with other commands such as Crime; and
 - (iv) inclusion of the ESC in the selection process for PPMs (either through inclusion on the selection panel or in consultation with the ESC),

- (b) determination and promotion throughout the QPS of a clear, supported, and dedicated *new* role for PPMs, including-
 - (i) review and approval of a revised role statement for PPMs that is clear, current, and specific to the PPM role (not a generic Inspector role);
 - (ii) wherever practicable, PPMs should be applied as a full-time professional standards resource;
 - (iii) inclusion in, and support for, a broader responsibility for development and implementation of prevention and proactive risk minimisation strategies;
 - (iv) an 'ethical network' of PPMs and ESC representatives for sharing learnings, developments in roles, and emerging risks - the CMC should have a standing invitation to participate in the ethical network also, in its capacity building function;
 - (v) ICT improvements directly supporting the PPMs (and their Assistant Commissioners) in the regions in early intervention capability;
 - (vi) encouragement of limited terms of appointment in PPM and Assistant PPM roles (minimum of two years and a maximum of four years) to ensure sufficient expertise in the role but minimise incumbency risks of capture or bias; and
 - (vii) engagement of Assistant PPMs at Senior Sergeant and Sergeant level, as well as administrative staff support, as approved by region, on a case needs basis,

- (c) expert training and skills certification (as may be described in the specific role statements) for the PPM and Assistant PPMs; and

- (d) a feedback loop *from* PPMs in supporting effective QPS training through ensuring specific input by PPMs from their experience of the particular needs of their regions into ethical standards scenario-based training packages developed by QPS, in consultation with the CMC, for targeted delivery to officers on a region by region basis.

RECOMMENDATION 21: (p. 88)

It is recommended that changes in the respective roles, responsibilities and procedures in the event of a police-related death, be agreed and resolved with the CMC, QPS and the Coroner as a priority.

RECOMMENDATION 22: (p. 89)

It is recommended that in respect of the extent of investigations as provided for in the HRMM that guidance on the relevant factors to take into account in determining the 'public interest', be included.

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RECOMMENDATION 23: (p. 89)

It is recommended that PPM and investigator training ensure an understanding of the distinction between disciplinary standard of proof and the criminal standard as well as a competency in meeting procedural fairness without undue excess. That training should include decision-writing.

RECOMMENDATION 24: (p. 90)

It is recommended that the QPS and the CMC settle an agreed position concerning acting in good faith that includes a purported exercise of power on the mistaken or ignorant understanding of the law as a matter for remedial intervention. In the event that an agreed position is not settled between the QPS and the CMC, the matter should be made the subject of an appropriate reference to the Queensland Law Reform Commission.

RECOMMENDATION 25: (pp. 91-92)

It is recommended that the QPS amends the relevant policies dealing with-

- a) sick leave or other health or fatigue related absence during a disciplinary matter to ensure it is addressed through-
 - the written show cause notice processes, including benchmarked timeframes;
 - exercise of the discretion of the Assistant Commissioner, ESC, including a positive obligation on an officer responsible for dealing with a complaint to refer a matter to the Assistant Commissioner, ESC; and
 - assessment by the forensic medical officer, where appropriate.
- b) *Extended Sick Leave of Subject Members* in s.18.2.5 of the HRMM should be amended to -
 - remove 'extended' when referring to sick leave; and
 - include consideration of risks and need for medical assessment as part of the decision to direct a subject member on sick leave to an interview.

RECOMMENDATION 26: (p. 93)

It is recommended that the ESC include in its business case for the replacement IT solution for the management of discipline and complaints, the ability to-

- a) maintain a central record of declared frivolous or vexatious complainants that should be checked in the initial vetting of all complaints in regions; and
- b) communicate to members the data, risks and treatments in place to manage evidence-based perceptions.

RECOMMENDATION 27: (p. 95)

It is recommended that an independent review be undertaken to -

- consider whether the privilege from self incrimination should be abrogated in disciplinary as distinct from criminal matters;
- examine the direct and derivative use and disclosure of information obtained during disciplinary or coercive proceedings in the whole Queensland public sector (including in the police disciplinary context);
- identify an appropriate balance between competing public interests; and
- make recommendations that set out the circumstances when coercively obtained information or evidence can not be used.

RECOMMENDATION 28: (p. 97)

It is recommended that the Public Service Commission and the QPS review the first year of implementation by the QPS of the risk management approach under the *Public Interest Disclosure Act 2010*.

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RECOMMENDATION 29: (p. 99)

It is recommended that-

- a) the QPS provides an open invitation for the CMC to attend any Operational Performance Review in its capacity building role, for the professional standards and ethical practice agenda; and
- b) an Early Intervention Working Party be established to support the continuous improvement and review cycle for the *QPS Corruption Prevention Plan 2009-2013* and in particular in review of-
 - early intervention strategies and tools and an examination of leading practice opportunities; and
 - specific treatments for 'at risk' officers and/or environments or workplaces.

The QPS working party should include the CMC and the unions.

RECOMMENDATION 30: (p. 102)

It is recommended that-

- a) the Queensland Government, and the QPS, accord strategic and operational priority to the consideration and implementation of a new discipline and complaints management information technology system that responds to the urgent need for improvements in accessibility, integration and functionality to support a more timely and effective police complaints, discipline and misconduct system; and
- b) in the interim, the QPS and the CMC implement additional immediate measures to improve real-time information access for the CMC to QPS complaints management data.

RECOMMENDATION 31: (p. 104)

It is recommended that, subject to amendments for privacy requirements, the QPS develop a report within the new Discipline and Complaints Management (IT) System that allows the publication of disciplinary information concerning decisions under the new police complaints and discipline system of substantiated matters involving a sanction of a reduction in rank or dismissal, on the QPS Bulletin Board and external QPS website.

RECOMMENDATION 32: (p. 104)

It is recommended that intranet and internet publication of de-identified disciplinary outcomes (including below sanction level of demotion) in the form of case studies focusing on topical issues be supported.

RECOMMENDATION 33: (p. 105)

It is recommended that the QPS continues a prevention program that, through using matrices (such as the drink driving matrix) or other concise tools, communicates to members clearly and unambiguously the consequences of serious misconduct.

RECOMMENDATION 34: (p. 108)

It is recommended that except in cases where demotion or dismissal is appropriate, a prescribed officer should generally deal with the matter through Remedial Intervention unless there are circumstances, which in the opinion of the prescribed officer (in consultation with the ESC) warrant a disciplinary sanction.

RECOMMENDATION 35: (p. 108)

It is recommended that the available range of disciplinary sanctions be amended as detailed in Table 9 (at p. 107), which includes repeal of the sanction of reprimand, and replacement of the provision for two penalty units with a range of penalty units (of 10, 30 and 50), and that legislation be amended accordingly.

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RECOMMENDATION 36: (p. 108)

It is recommended that the QPS make amendments to policy and procedures to ensure management action and Remedial Intervention is recorded on a member's personnel file and that the files are provided to an officer in charge when the member transfers or moves on promotion.

RECOMMENDATION 37: (p. 108)

It is recommended that the prescribed officers authorised to determine the amended range of sanctions, namely Inspectors and above as detailed in Table 9 (at p. 107) be approved, and that legislation and delegated authorities be amended as necessary.

RECOMMENDATION 38: (p. 108)

It is recommended that an indicative range of sanctions be provided to the prescribed officer with the investigation report as a matter of course.

RECOMMENDATION 39: (p. 110)

It is recommended that the *Police Service (Discipline) Regulations 1990* (and related policies and procedures manuals) be amended to permit remedial intervention, and other management initiatives concerned with the performance and conduct of an officer, either before, after or contemporaneously with formal disciplinary sanction processes (including investigations).

RECOMMENDATION 40: (p. 111)

It is recommended that the power to suspend a sanction of dismissal, be removed.

RECOMMENDATION 41: (p. 111)

It is recommended that the power to suspend a sanction other than dismissal be retained and used only where there are circumstances justifying imposition of penalty but mitigating circumstances warrant suspension.
in respect of sanctions other than dismissal that-

- a) the legislation be amended, to ensure-
- the presumption is against suspending a sanction;
 - sanctions are suspended only where particular circumstances justify suspending the sanction;
 - relevant mitigating factors are not first taken into account in the determination of sanctioning; and
- b) the ESC subjects the frequency and appropriateness of the use of the suspension power to scrutiny.

RECOMMENDATION 42: (p. 111)

It is recommended that suspended disciplinary decisions should never be expunged from an officer's record.

RECOMMENDATION 43: (p. 113)

It is recommended that the *Police Service Administration Act 1990* be amended to provide that if a suspension without pay is proposed, then a 14 day show cause is required.

RECOMMENDATION 44: (p. 113)

It is recommended that the *Police Service Administration Act 1990* be amended to provide that if a disciplinary charge is not brought against the subject officer within 90 days of the decision to stand down or suspend, then the decision to stand down or suspend is reviewable by the QCAT.

RECOMMENDATION 45: (p. 113)

It is recommended that the QPS give further consideration to appropriate opportunities for including a civilian capacity in QPS governance mechanisms or quality control committees.

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RECOMMENDATION 46: (p. 114)

It is recommended that the legislation be amended to include review of action against an officer for breach of discipline in the QCAT's jurisdiction, instead of the current review available by a Commissioner for Police Service Reviews.

RECOMMENDATION 47: (p. 116)

It is recommended that the QPS and the CMC provide to the public, through the Parliamentary Crime and Misconduct Committee, a joint annual report *Ethical Health Scorecard for QPS* that includes an integrated, *whole system* account of performance and activities in misconduct prevention, risk management and performance management, and the operation of the police complaints, discipline and misconduct system.

RECOMMENDATION 48: (p. 118)

It is recommended that the QPS include as part of the IT solution for the discipline and misconduct system a receipting form to ensure that when a complaint has been assessed by a Commissioned Officer and entered onto the QPRIME system, an acknowledgement receipt is generated and provided to the complainant (either personally, by mail, email, sms).

RECOMMENDATION 49: (p. 118)

It is recommended that an additional step of acknowledging possible police complaints information for a member of the public attending at a local station should be adopted and included in the information technology transition from the current police complaints system to a QPRIME solution.

RECOMMENDATION 50: (p. 121)

It is recommended that the capacity of QPS supervisors to deliver front-line leadership and management of ethical and professional standards be significantly improved by the development of an *Integrated Supervisors' Capability Plan* that includes-

- a) **integrity screening** of officers before appointment or promotion to *supervisory* roles in the QPS (including a legislative framework based on the s.71 of the NSW *Police Act 1990* precedent);
- b) supervisor **induction** training courses to support officers 'stepping up' into supervisor roles and supervisor-specific scenario-based components to model meeting the challenges of ethical and performance contextualised dilemmas such as 'managing mates' and policing in volatile and/or remote environments;
- c) stand alone Supervisor Professional Standards and Strategies **Brief** (reviewed regularly) as an ongoing ready resource for supervisors *on-the-job*, which includes a plain English concise summary of the roles and responsibilities of a supervisor including their obligations in the performance management and police complaints systems (with links to the various sources, further reference materials and recommended contacts for further advice or guidance such as for avoiding legal or grievance issues); as well as a range of the typical ethical and performance management scenarios and the best choices involved;
- d) regular mandatory **refresher courses** in supervisor training that involves the ESC and the CMC in course delivery/attendance to facilitate identification of areas of concern, and where further training and development is needed, as an early alert of supervisory concerns before a complaints pattern, or workplace morale picture, emerges for possible detection later in the system;
- e) consideration of a supervisors **network or mentoring program**, supported by the ESC and the CMC; and

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- f) support in **organisational knowledge management of staff** concerning the conduct improvement or professional standards development of staff through timely and regional access to an integrated quality performance management system and police complaints, discipline and misconduct information technology management system.

RECOMMENDATION 51: (p. 123)

It is recommended that the ESC review its proactive communications and publication series-

- a) in consideration of a risks/needs analysis,
- b) in consultation with the CMC, the human resources management section of the department, and the executive and staff (e.g. sample or online survey),

to develop an integrated ethical conduct and professional standards communication strategy with staff, that further develop its publications plan and communication outputs to include additional leading practice techniques from other jurisdictions, timely reminders of ethical obligations, and to respond to the needs and interests of QPS staff. Adverse media coverage of misconduct matters should trigger an opportunity for the ESC to communicate key misconduct messages and facts on current issues with staff.

RECOMMENDATION 52: (p. 124)

It is recommended that in consultation with the CMC and relevant unions, a review and business case for targeted drug and alcohol testing consistent with developments of leading practice in other jurisdictions and occupations be conducted.

RECOMMENDATION 53: (p. 124)

It is recommended that the CMC, in consultation with the QPS and in consideration of a QPS/CMC training needs analysis, develop and implement a regional training program in the QPS for building QPS capacity in preventing and dealing with misconduct.

RECOMMENDATION 54: (p. 124)

It is recommended that the off duty application of the new *Code of Conduct* and *Standard of Practice* for QPS officers be confirmed through the chain of command and in direct communications with staff as soon as possible.

RECOMMENDATION 55: (p. 125)

It is recommended that a review of the resourcing numbers, skills mix and physical resources of the ESC and the misconduct function of the CMC be supported.

RECOMMENDATION 56: (p. 126)

It is recommended that a memorandum of understanding be negotiated between the CMC and the QPS to facilitate a timely and cooperative joint resourcing model in support of respective peakloads in preventing and dealing with misconduct.

RECOMMENDATION 57: (p. 126)

It is recommended that a business case be developed and assessed for a surveillance capability at the CMC dedicated to the misconduct function (i.e. the ready availability of surveillance resources not in competition with the crime functions), and available to the ESC as may be agreed with the CMC.

APPENDIX B

Independent Review Panel Police Complaints, Discipline and Misconduct System

Terms of Reference

The Review Panel's Terms of Reference require the panel to-

- consider recommendation 3 of the CMC Report, *Setting the Standard*, and propose specific models for Government to consider that would address this recommendation.
 - ... review the relevant policies and procedures, steps and processes in the current system for the management of police complaints and discipline with a view to :
 - a. reducing the level of complexity in the system
 - b. identifying clearer and simpler workflows for managing and dealing with misconduct and other inappropriate conduct
 - c. identifying and developing strategies to address potential choke points in the system caused by inadequate resourcing
 - d. identifying and assessing work-flow risks and articulating appropriate treatments
 - e. incorporating the recommendations made in the audit report (Appendix C), and giving officers adequate training in conducting preliminary inquiries and making assessment decisions about complaints 'interwoven with court'
 - f. putting timeframes on key steps in the process, and linking these to appropriate consequences to ensure a timely conclusion of the matter.
- identify options, including a recommended option, for a model for the QPS management of police complaints, discipline and misconduct:
 - which are consistent with the principles identified in the CMC report: simple, effective, transparent and strong;
 - which address the issues recommended by the CMC; and
 - which will promote public confidence in the police complaints and police discipline system.
- identify options, including a recommended option, for the role of the CMC in the management of police complaints, discipline and misconduct, in particular:
 - how to ensure better decisions are made by CMC staff as to which complaints should be dealt with by the QPS, and the appropriate level of monitoring the CMC will conduct in relation to those matters;
 - how the CMC can best monitor how the police service deals with misconduct and official misconduct matters;
 - identifying cases which, if handled by the QPS, would attract criticism of actual or perceived bias on the part of the QPS and to determine whether such matters are being dealt with by the CMC and the QPS appropriately;
 - how the model will reduce double-handling of complaints by the CMC and the QPS; and
 - have regard to the learnings from projects that proposed a devolution model (Project Resolve and Project Verity).
- identify, where relevant, legislative and administrative reforms for (i) and (ii) above.
- consider any other issues that may be relevant, including for example:

Any issues relating to the prosecution of official misconduct in QCAT, including issues about claims of privilege from self-incrimination that could limit the CMC's ability to successfully prosecute matters against police officers in QCAT.

APPENDIX C

STAKEHOLDER CONSULTATION - SUBMISSIONS AND CORRESPONDENCE

<u>Organisation</u>	<u>Invitation for submission</u>	<u>Response</u>
Queensland Police Union - Mr Ian Leavers, General President & CEO	Posted 9 March 2011	Submission received, dated April 2011
Queensland Police Commissioned Officers' Union - Mr Tony Cross, President	Posted 9 March 2011	Submission received, dated 18 March 2011
Parliamentary Crime and Misconduct Commission - Mr Paul Hoolihan MP, Chairperson	Posted 9 March 2011	Submission received, dated 25 March 2011
Queensland Public Union of Employees - Ms Vivienne Doogan, President	Posted 9 March 2011	Email received, 29 March 2011
Aboriginal & Torres Strait Islander Legal Service - Mr Shane Duffy, CEO	Posted 9 March 2011	Submission received, dated 1 April 2011
Queensland Law Society - Mr Bruce Doyle, President	Posted 9 March 2011	Submission received, dated 1 April 2011
Legal Aid Queensland - Mr Anthony Reilly, CEO	Posted 9 March 2011	Email received, 15 March 2011
Queensland Bar Association - Mr Richard Douglas S.C.	Posted 9 March 2011	Telephone discussions, March 2011
Queensland Council for Civil Liberties - Mr Michael Cope, President	Posted 9 March 2011	-
Department of Justice and Attorney-General - Mr Philip Reed, Director-General	Posted 9 March 2011	Letter received, dated 31 March 2011
The Queensland Civil and Administrative Tribunal - The Honourable Justice Alan Wilson	Posted 9 March 2011	Letter received, 17 March 2011
The Parliamentary Crime and Misconduct Commissioner Mr G P Long SC	April 2011	Letter received, 6 May 2011

APPENDIX D

**DIRECTIONS ISSUED BY THE
CRIME AND MISCONDUCT COMMISSION
TO THE
COMMISSIONER OF THE QUEENSLAND POLICE SERVICE
PURSUANT TO SECTION 40 OF THE *CRIME AND MISCONDUCT ACT 2001***

Preamble

The Commissioner of the Queensland Police Service must notify the CMC of a complaint or information or matter which the Commissioner suspects involves, or may involve, official misconduct (complaint) pursuant to section 38 of the *Crime and Misconduct Act 2001*. Section 37 of the Act provides that the Commissioner must notify the CMC of any complaint that the Commissioner reasonably suspects involves police misconduct.

Section 40 of the Act provides that the CMC may issue directions about how and when a public official must notify the CMC of complaints under sections 37 and 38.

Direction

Except in the case of complaints that fall within the categories set out in Schedule A below, the Commissioner may immediately start dealing with any complaint that raises a suspicion of official misconduct or police misconduct. The Commissioner shall each week provide the CMC with a schedule containing details of all such complaints arising since the provision to the CMC of the previous week's schedule.

If a complaint falls within one of the categories set out in Schedule A below, the Commissioner shall notify the CMC of the complaint, without delay, in writing and shall take no other action in relation to the matter (other than that which is required to preserve life and property and maintain the integrity of any possible evidence/ crime scene) unless authorised to do so by the CMC. Notification of urgent matters must initially be made by telephone to an appropriate CMC officer.

Schedule A

- 1 A complaint raising a suspicion of official misconduct or police misconduct or both involving an alleged:
 - 1.1 offence of corruption (s87) or extortion by public officers (s88) or abuse of office (s92) in chapter 13 of the Criminal Code (CC)
 - 1.2 inappropriate association with a criminal and/or a member of an outlaw motorcycle gang or other criminal group.
 - 1.3 offence of attempt to pervert the course of justice (s140) or official corruption (s 121) or perjury (s123) or other offence in chapter 16 of the CC

APPENDIX D

- 1.4 assault which has caused or may cause a serious injury and which could lead to a charge of unlawful wounding (s323) or doing grievous bodily harm (s320) in chapter 29 of the CC
- 1.5 offence relating to property in Part 6 of the CC where the value exceeds \$5000
- 1.6 indictable offence (not otherwise stipulated) carrying a maximum penalty of 7 years imprisonment or more
- 1.7 offence contained in the *Drugs Misuse Act*
- 1.7 offence of victimisation (s7.3) under the *Police Service Administration Act 1990* (PSA) or injury or detriment to witness (s211) or victimisation (212) under the *Crime and Misconduct Act 2001*(CMA)
- 1.8 failure to comply with section 7.2 of the PSA

2. A complaint involving an Indigenous complainant or alleged victim concerning assaults in custody or failure to provide medical treatment whilst in custody.
3. An incident involving a police officer resulting in death or injury of a description which could amount to unlawful wounding or grievous bodily harm or destruction of or damage to property where the extent of the damage is likely to exceed \$5000.00.
4. A matter that is or is likely to be the subject of significant media attention.

Robert Needham
Chairperson
Crime and Misconduct Commission

Robert Atkinson
Commissioner
Queensland Police Service

APPENDIX E

RECOMMENDATION 13:

Summary of *Joint Assessment* proposal¹

The initial assessment should be a triage exercise balanced by the provision of enough need to know information. The *Joint Assessment* process, in support of the devolution principle, is conducted in pursuance of the section 34 principle of *cooperation* and with a common purpose focussed on the *public interest* principle.

The CMC and the QPS meet as regularly as necessary but at least once a week to undertake a *Joint Assessment* process. In pursuance of benchmarked timeframes, an initial assessment decision should be made within 14 days of the complaint being first made to the QPS or the CMC.

The *Joint Assessment* includes a subset of the Category 1 matters under the new *Police Complaints and Professional Standards Model* (see p. 57 of the Independent Review Panel Report, May 2011) being the current Category A matters (as extended by Recommendation 10 in the Panel's Report) as well as those complaints received by the CMC from the public (CMC's Category 1 and 2) that the CMC considers suitable for either joint investigation or referral to QPS to deal with subject to a review by the CMC.

The *Joint Assessment* would exclude necessarily covert matters, as determined by the CMC.

Membership of *Joint Assessment* should be at a senior level with decision-making authority and should include at least the relevant Director, or equivalent (CMC) and the Chief Superintendent, ESC (QPS). Membership should be limited to no more than four members for each agency, unless agreed by exception.

The terms of reference for the *Joint Assessment* should include an agenda in respect of all matters to be assessed that covers the following:

- The nature and seriousness of the complaint.
- The expectations of the complainant, if known.
- What information/evidence is there to support the complaint? This would include complainants' statements/versions(if available), profiles of both the subject officer and complainant, CCTV, witness versions and any forensic evidence.
- The classification of the alleged conduct.
- Are there public interest issues?
- What investigative strategies and resources should be adopted and allocated to the investigation?
- Which agency will take lead status?
- Should it be a joint investigation? (There is merit in more joint investigations of serious matters).
- Whether the CMC will review the way the QPS is dealing with a matter under sections 47(1)(b) or 48(1)(b) of the *Crime and Misconduct Act 2001* 'before' or 'after' the QPS determines any disciplinary action, or preferably (in the interests of timeliness) by review 'during' investigation, as may be appropriate in the circumstances.

Although the CMC has the ultimate decision-making authority in respect of the assessments, in the event that agreement on a matter of concern can not be reached at the Joint Assessment then the matter should be referred to the Assistant Commissioner, Misconduct Investigations (CMC) and the Assistant Commissioner, ESC (QPS) for further discussion in the first instance.

¹ The matters addressed in this summary should form part of the Terms of Reference developed in support of *Joint Assessment*.

APPENDIX F (RECOMMENDATION 47)

Matters for Special Joint Annual Report

The following is suggested as a mandatory minimum for the joint annual report :-

Basic Overview:

- **number** of police complaints received by QPS and CMC, and as a relevant percentage of police numbers
- allegation **types** by number / % (e.g. assault - 30%, official conduct - 25%) (CMC and QPS)
- number of complaints **referred** by QPS to CMC under section 40 Directions
- CMC **assessment** decisions: action taken to deal with complaints – CMC to investigate (x%); referral to QPS to deal with (x%) : to investigate, CMC review (x%), OAO (y%); no further action (z%)
- overall **outcomes** of complaints (%) by type of conduct: not substantiated (x%), management action (e.g. guidance, training, apology) (y%), disciplinary proceedings (x%)
- **timeliness** targets – actual performance by both agencies on benchmarked timeframes as per items in Tables 6, 7 and 8 in the Review report; (CMC and QPS)
- **staffing** numbers and mix (ESC(and within ESC per branch, unit), PPMs and Assistant PPMs in total and by region; CMC Misconduct)
- **training** conducted (QPS and CMC) [Also see recommendations 2, 20(c), 23, 50(b), 53]
- **budget** allocation and expenditure, and as proportion of total agency budget (target and actual) specific to ESC only (and within ESC per branch, unit); CMC, Misconduct
- change **report** on implementation progress against approved recommendations in the Independent Panel's Review report.

Complaints Management

- complaints
 - number received by category (misconduct (NB misconduct under the PSA Act = official misconduct + police misconduct under the CM Act), breach of discipline (joint CMC and QPS data)
 - sources of complaints (%) – members of the public, PIDs, other (CMC and QPS data)
 - QPS decisions re:
 - matters referred by the CMC ('om' & 'pm' / misconduct): to investigate (x%), management process (y%), no further action (z%)
 - breach of discipline: to investigate (x%), management process (y%), no further action (z%)
 - other performance measures:
 - quality: compliance and integrity (e.g. compliance with legislation, assessment policy, procedures, application of criteria; appropriateness of decision given circumstances of case etc)
 - frivolous and vexatious complaints/declared complainants - numbers (QPS, CMC)
- QPS investigations
 - Nos / x% of all complaints referred to QPS to deal with

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- Nos / x% at direction of CMC
- Nos / x% QPS decision
- Nos / x% by types of allegations investigated
- Outcomes: recommendations
 - re: subject officers not substantiated (x%), management action (e.g. guidance, training, apology) (y%), consideration of disciplinary proceedings (x%)
 - re: procedural issues (individual and organisational level) re: remedial action / prevention / systemic issues – e.g. training for individual officer, policy or operational procedures be reviewed
- performance measures:
 - timeliness
 - quality: compliance and integrity
- CMC investigations
 - Nos / x%
 - Official misconduct
 - Police misconduct
 - Cooperative investigations
 - Nos / x% by types of allegations investigated
 - Outcomes: recommendations
 - re: subject officers not substantiated (x%), consideration of management action (e.g. guidance, training, apology) (y%), consideration of disciplinary proceedings (x%)
 - re: procedural issues (individual and organisational level) re: remedial action / prevention / systemic issues – e.g. training for individual officer, policy or operational procedures be reviewed
 - performance measures:
 - timeliness
 - quality: compliance and integrity
- ESC monitoring activities
- CMC monitoring activities
 - Reviews (nos / %)
 - Outcomes: satisfied / dissatisfied (nos / x%)
 - basis of dissatisfaction
 - recommendations:
 - re: outcome of investigation of allegations, e.g. recommendation that disciplinary proceedings be considered
 - re: procedural issues (individual and organisational level) re: remedial action / prevention / systemic issues – e.g. training for individual officer, policy or operational procedures be reviewed
 - Audits – focus (e.g. compliance and integrity, issue based) and outcomes, including any recommendations made

Discipline

- proceedings initiated by conduct type (nos. / x%): official misconduct, misconduct, breach of discipline
 - by type of allegation - e.g. assault
- outcomes: overall and by allegation type - dismissal, reduction in rank, fine etc (nos. / x%)
- performance:
 - timeliness targets
- QCAT matters: cases CMC or QPS initiate in the original (official misconduct) jurisdiction

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(including a precis of each case) and reviews (misconduct) the CMC initiates with outcomes, where known.

- Disciplinary declarations (QPS and QCAT) by allegation type – nos.

Integrity / prevention and research issues

- CMC
 - report on the QPS Integrity Profile / scorecard, as per aspects updated each year– a full profile would not be conducted every year, but aspects of the profile could be updated each year:
 - Integrity framework – Index
 - Element A Complaints management
 - Component 1 – Reporting policies, procedures and practices
 - Component 2 – Dealing with and investigating misconduct
 - Component 3 – PIDs and whistleblowers
 - Element B Misconduct prevention
 - Component 4 – Internal control: policies, procedures and practices
 - Component 5 – General prevention activities
 - Element C Institutional integrity
 - Component 6 – Integrity unit / integrity actor
 - Component 7 – Commitment to and promotion of integrity
 - The results of CMC investigations and / or monitoring activities for the agency
 - CMC / agency surveys / interviews relating to ethical conduct issues
 - Analysis of CMC misconduct research and reports
 - Trend and risk analyses for a particular agency or activity
 - Targeted activities designed to identify and address previous agency shortcomings
 - Compliance (or otherwise) with s. 48 directions (where applicable)
 - Public reports: Misconduct, Research, Intelligence, and recommendations made
 - Case studies
 - Review of the implementation and effectiveness of recommendations made by the CMC and the QPS
 - Results of research, prevention and intelligence activities e.g: risk identification and management, public attitudes, ethics
 - Environmental scan
 - Trends
 - Any other significant issues / risks
- QPS
 - Results of research activities Environmental scan
 - Trends and issues / risks
 - Identification, implementation and effectiveness of any strategic, systemic, operational initiatives to enhance ethical health
 - profiling (RAIS) – number and outcomes

**Other data and reporting information as agencies may determine.*

Under the new model for Police Complaints and Professional Standards:

Implementation planning should include settling minimum matters for the annual report that transitions nomenclature and relevance of categories from the current system to the new, plus a reporting framework that will support comparative review in implementation of key or new system elements.

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