

## Parliamentary Crime and Misconduct Committee – Inquiry into the Crime and Misconduct Commission’s release and destruction of Fitzgerald Commission of Inquiry documents

### The Honourable Ian Callinan AC and Professor Nicholas Aroney - Review of the *Crime and Misconduct Act 2001* and related matters

#### **Queensland Government Response**

Good government relies upon the existence of robust laws and institutions to ensure government is honest, fair and open. Maintaining law and order is also an essential element to the proper functioning of stable government.

The Queensland Government therefore supports an independent high performing Crime and Misconduct Commission entrusted to perform important functions in major crime detection and prevention as well as in the investigation and management of high level misconduct in public sector agencies.

The CMC through its major crime function investigates and combats major crime, has wide coercive powers and is able to provide other law enforcement agencies with invaluable information and assistance to bring to justice serious and dangerous criminals and criminal organisations.

Through its misconduct function, the CMC is able to investigate official misconduct of public sector agencies and currently assists or monitors how public sector agencies deal with and prevent misconduct.

Given its wide investigative and coercive powers, the oversight of the CMC has been entrusted to the Parliamentary Crime and Misconduct Committee (PCMC), which must undertake comprehensive three yearly reviews of the CMC’s current activities and operations. It is through this process that the CMC is accountable to Parliament and to the people of Queensland.

The Government is concerned the CMC is called upon to investigate complaints being inappropriately made for political purposes. The Government considers such complaints are a distraction for the CMC and divert the CMC’s resources away from its important major crime and misconduct functions.

Accordingly, in October 2012, in response to these concerns the Government appointed an Independent Advisory Panel consisting of the Honourable Ian Callinan AC and Professor Nicholas Aroney to review the *Crime and Misconduct Act 2001* and related matters.

The Independent Advisory Panel received more than 60 written submissions and sought information from certain key interested persons, including the CMC, to inform its review. A copy of the Independent Advisory Panel’s report was tabled in the Legislative Assembly on 18 April 2013. The report had some confidential information removed prior to its tabling.

During the period the Independent Advisory Panel was conducting its review, it was revealed that certain confidential Fitzgerald Commission of Inquiry documents had been publicly released, following incorrect classification by the CMC, or destroyed. On 8 March 2013, the Attorney-General moved a motion in the Parliament pursuant to section 292(d) of the *Crime and Misconduct Act 2001* that the PCMC inquire into and report by 5 April 2013 on the incorrect classification and release; or destruction of these documents and related matters.

In March 2013, the PCMC held public hearings and on 5 April 2013, the PCMC tabled its report No. 90, *Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Commission of Inquiry documents*, in the Legislative Assembly.

The Independent Advisory Panel's report contains 17 recommendations aimed at ensuring the CMC operates more effectively and is able to focus on its primary major crime and misconduct functions.

The PCMC report contains 24 recommendations, many of which are aimed at improving the internal practices, processes and culture within the CMC and other public sector agencies for the protection of confidential historical information. The recommendations also address organisational and administrative changes to the CMC.

The Government is committed to implement the recommendations from both reports that will lead to an improvement in:

- public confidence in the CMC;
- timeliness of the investigation of complaints;
- operational and corporate governance structures within the CMC;
- current culture within the CMC;
- CMC internal complaint management systems for misconduct matters; and
- internal processes and procedures in the CMC and related agencies.

To achieve this an Implementation Panel, consisting of the Director-General, Department of Justice and Attorney-General (Chair); Director-General, Department of the Premier and Cabinet; Commission Chief Executive, Public Service Commission; and Acting Chairperson, CMC has been established and is charged with responsibility for overseeing and directing the consideration and implementation of the Independent Advisory Panel's recommendations (except recommendations 7 and 9 relating to proceeds of crime confiscation and Standing Orders respectively); and also related recommendations 2, 4, 18, 19 and 21 of the PCMC report. The Implementation Panel's work includes oversight of the organisational and administrative restructure of the CMC as provided for by recommendation 1 in the Independent Advisory Panel's report.

The Government has accepted a number of the recommendations referred to above from both reports, noting that the Implementation Panel will consider the most appropriate approach and provide advice how the recommendation's intention is best achieved.

The Independent Advisory Panel considered whether the CMC's crime and misconduct functions should be divided to create two entities, but did not recommend this occur, noting the issue could be reviewed after the organisational and administrative restructure of the CMC.

While one of the most compelling reasons to divide the two functions is the perception that the CMC has lost its focus on important or serious matters; the Independent Advisory Panel suggested that this may be addressed through implementation of its recommendations to reduce the number of misconduct complaints and to transfer certain other CMC functions to more suitable agencies.

The Government does not support a division of the CMC's crime and misconduct functions at this point in time. It is more appropriate to focus on implementation of the recommendations of both reports. The question of whether further reforms are needed can be considered, if necessary, once the administrative and organisational restructure of the CMC and its related agencies have been achieved.

The Queensland Government response to each of the recommendations made by the PCMC and Independent Advisory Panel is set out in the tables below. It is set out in two parts. The first part responds to the PCMC Report recommendations and the second part responds to the Independent Advisory Panel's report.

A number of the recommendations in the two reports are directed to the CMC, which is an independent statutory body. Where possible, the Government response indicates what the CMC has informed Government it intends to do in response to the relevant recommendation.

The Government intends that legislation to give effect to the accepted recommendations will be introduced this year, with the completed implementation of all accepted recommendations from both reports finalised by March 2014.

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
<p>1 The Committee recommends that an appropriate, independent investigation of issues relating to the dissemination and destruction of the Fitzgerald Inquiry material be established with a view to identifying possible disciplinary action or breaches of the <i>Crime and Misconduct Act 2001</i>.</p> <p>In accordance with normal protocols, the CMC and the Committee will liaise about the most appropriate mechanism for the investigation.</p> <p>It is important that any inquiry be commenced ab initio (from the beginning) and that evidence gathered by the Committee not be used in such inquiry, in contravention of sections 8 and 9 of the <i>Parliament of Queensland Act 2001</i>.</p> <p>Without limiting the inquiry, the inquiry should consider the following matters:</p> <ul style="list-style-type: none"> <li>• Whether any breaches of section 62 of the <i>Crime and Misconduct Act 2001</i> had occurred (unlawful dissemination of material), by whom and if any defences exist for those breaches</li> <li>• Whether any breaches of the <i>Public Records Act 2002</i> had occurred (such as destruction of permanent records), by whom and if any defences exist for those breaches</li> <li>• Whether any other breaches of the <i>Crime and Misconduct Act 2001</i> had occurred, including specific consideration of section 210 (fabrication of record, destruction or alteration of record with the intent to obstruct or delay a Commission function) or section 218 (providing a false or misleading document to the Commission);</li> <li>• Whether any CMC officer has committed official misconduct or another disciplinary breach by: <ul style="list-style-type: none"> <li>○ Failing to follow a lawful directive;</li> <li>○ Maladministration;</li> <li>○ Negligently or deliberately failing to report matters in</li> </ul> </li> </ul>	<p><i>Noted</i></p> <p>This is a matter for the CMC and in particular the Acting Chairperson who is currently responsible for CMC staff disciplinary matters.</p> <p>The PCMC has noted its intention to liaise with the CMC about the most appropriate mechanism for the proposed independent investigation of the matters leading up to the dissemination and destruction of the Fitzgerald Commission of Inquiry documents.</p> <p>The PCMC and the CMC have agreed that Mr Tony Glynn QC investigate the issues relating to the dissemination and destruction of the Fitzgerald Inquiry material with a view to identifying possible disciplinary action or breaches of the <i>Crime and Misconduct Act 2001</i>.</p> <p>The Government notes that the PCMC, through its oversight function of the CMC, will be able to monitor the progress of this investigation, including the outcome.</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>accordance with approved frameworks, charters or policies or in accordance with the general provisions of the Code of Conduct.</p>
2	<p>As a matter of urgency the Commission needs to review the operations of and address the culture within the Legal Services Unit and report back to the Committee.</p> <p><i>Noted</i></p> <p>The CMC has committed to review the operations of and address the culture within the Legal Services Unit and will report back to the PCMC.</p> <p>In addition the Implementation Panel established by the Government and which includes the Acting CMC Chairperson, has been tasked to oversee the implementation of this recommendation, given its relevance to the CMC's overall operational and administrative structure. It will be considered as part of the administrative and organisational review being undertaken into the CMC.</p> <p>The CMC will finalise its preliminary review of the structure, roles and reporting lines of the Legal Services Unit in time for input into the administrative and organisational review to be overseen by the Implementation Panel.</p>
3	<p>That the CMC review and report to the Committee on proposed changes to how it handles sensitive historical information, including the Fitzgerald Inquiry records and records of both the CJC and CMC. The CMC's report to the Committee should include proposed procedures to determine the appropriate CMC officers to have responsibility for the information, training for those officers around their responsibilities in relation to the information, and appropriate accountability mechanisms for decisions and actions by the responsible CMC officers regarding dealings with that information.</p> <p><i>Noted</i></p> <p>The CMC has accepted this recommendation and commenced work to review and change the way it currently handles sensitive historical information. It is important that the people tasked with the responsibility to manage the storage of, and access to sensitive CMC historical documents, including the Fitzgerald Commission of Inquiry documents, have the appropriate skills and expertise to recognise and appreciate the importance of those documents. Related systems and procedures will be reviewed, amended and where necessary confirmed. This will ensure proper protections are in place and any risks associated with the classification, release or destruction of the documents are averted.</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>The PCMC requires the CMC to report back to it on the progress of, and outcome of the implementation of this recommendation.</p> <p>The CMC has drafted a project plan which partly addresses recommendations 3, 6, 10, 11 and 16 of the PCMC Report which relate to the Fitzgerald Commission of Inquiry documents held by the CMC. The proposed end date for this project is 30 August 2013.</p> <p>An associated project involves a full review of the CMC Records Management policy, procedure and work instructions. The tentative completion date for this project is September 2013. Training and embedding is a longer term proposition but will be conducted expeditiously and certainly from October 2013 once the training products are developed.</p>
<p>4 That the CMC review its policies and procedures in relation to large scale projects, to ensure that:</p> <ul style="list-style-type: none"> <li>a) appropriate senior officers are appointed to lead important or significant projects;</li> <li>b) appropriate procedures to document and record decisions and actions are in place and adhered to; and</li> <li>c) appropriate mechanisms to report to management in relation to those projects are in place and adhered to.</li> </ul>	<p><i>Noted</i></p> <p>The Government notes that while the PCMC has directed this recommendation to the CMC; the Implementation Panel established by the Government and which includes the Acting CMC Chairperson has been tasked to oversee the implementation of this recommendation, given its relevance to the CMC's overall operational and administrative structure. It will be considered as part of the administrative and organisational review being undertaken into the CMC.</p> <p>The CMC has reviewed its policies and procedures in relation to large scale projects. The CMC Internal Auditor's audit of project management in the CMC during January 2013 assisted this review. The findings are available for input into the administrative and organisational review.</p>
<p>5 That the CMC audit, review and report to the Committee on the appropriateness, and validity, of all delegations.</p>	<p><i>Noted</i></p> <p>The CMC is responsible for this recommendation and it has committed to an audit and review of all its delegations to ensure their appropriateness and validity. This is particularly important given Finding</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>No. 3 by the PCMC that the Commission's power to disseminate CMC information under section 62 of the <i>Crime and Misconduct Act 2001</i> had not been properly delegated to the person who was exercising that power.</p> <p>The Government notes the PCMC requires the CMC to report back to it on the progress of, and outcome of the implementation of this recommendation.</p>
<p>6 That the CMC review its records held by the QSA and the status of the metadata in relation to those records.</p>	<p><i>Noted</i></p> <p>The Government notes that the CMC is responsible for reviewing its records held by the QSA including the status of the metadata in relation to those records.</p> <p>The CMC has commenced work on this review. A project plan has been drafted which partly addresses recommendations 3, 6, 10, 11 and 16 of the PCMC Report which relate to the Fitzgerald Commission of Inquiry documents held by the CMC. The proposed end date for this project is 30 August 2013.</p> <p>An associated project involves a full review of the CMC Records Management policy, procedure and work instructions. The tentative completion date for this project is September 2013. Training and embedding is a longer term proposition but will be conducted expeditiously and certainly from October 2013 once the training products are developed.</p>
<p>7 That the State Archivist review QSA policies, procedures and information provided to agencies in relation to transfer of an agencies records to the QSA, to ensure agencies are clearly informed of QSA procedures in relation to the metadata.</p>	<p><i>Accepted</i></p> <p>Queensland State Archives is revising its procedures and practices for the transfer of records and setting of Restricted Access Periods to help ensure greater agency awareness of their responsibilities during this process. Agencies are required to provide Restricted Access Period (RAP) notices at the time of transfer, and the RAP form has been revised to include provision for explicitly indicating whether or not item-level metadata for records subject to a RAP access can be released in the public</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>catalogue.</p> <p>Reflecting these changes, Queensland State Archives is currently reviewing its <i>Transferring Public Records to Queensland State Archives</i> guideline and will seek feedback from clients during this process. Also under development is a brief guide to the transfer process to highlight key decisions and responsibilities of the agency.</p> <p>Queensland State Archives has completed a review of form letters that are sent to agencies to approve and confirm transfers. These letters now provide clearer information on whether or not item-level metadata is to be released. A review of practices and procedures relating to metadata issues is underway with additional actions arising from the review to be implemented by October 2013.</p>
8	<p>That the QSA review its processes and advice provided to agencies in relation to individual access authorisations to ensure authorisations are valid prior to providing individual access to an agency's closed records.</p> <p><i>Accepted</i></p> <p>The provision of access to restricted records (authorised access) requires the permission of the responsible agency in accordance with section 18 of the <i>Public Records Act 2002</i>. This permission can be granted by the chief executive of the public authority or their authorised delegate. The delegations for authorised officers are valid for a period of two years. As the current authorisations expired on 30 June 2013, the State Archivist has written to chief executives of responsible public authorities requesting that they renew and/or update the authorisations. A new brief guide on the responsibilities of authorised officers was included with this letter.</p> <p>The new brief guide, <i>Delegated Access Authorisations</i> outlines the responsibilities under the <i>Public Record Act 2002</i> for authorising access to restricted records and setting and changing RAPs. It also emphasises the need for public authorities to have their own internal procedures to support decision making and to consider their legislative and regulatory environments when making such decisions.</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>Queensland State Archives has also developed a new internal procedure on granting access to restricted records. The new procedure includes checking by a second archivist to ensure the signature on the form granting access is that of a current authorised officer. The form has been revised to allow the archivists to verify that the necessary checks have been made. While the completed forms were retained by Queensland State Archives in the past, a new daily log of authorised access is now also maintained.</p> <p>Queensland State Archives intends to develop a new guide by August 2013 for authorised officers on factors to consider when deciding whether or not to grant access to restricted records.</p>
<p>9 That the QSA advise relevant Chief Executive Officers of the extent the authorisations under the authorised access forms will allow their delegates to set and change restricted access periods and provide access to closed documents upon application by researchers. This advice should include a recommendation that the agency has appropriate and effective internal controls in place to mitigate the risk of inappropriate disclosure.</p>	<p><i>Accepted</i></p> <p>The provision of access to restricted records (authorised access) and the setting and changing of Restricted Access Periods must be authorised by the responsible agency in accordance with section 18 of the <i>Public Records Act 2002</i>. Authorisation must be by the Chief Executive Officer or their authorised delegate. These authorisations are recorded on Queensland State Archives "Access Authorisation Forms".</p> <p>It is important chief executives and their delegates are fully aware of the extent authorisations under the authorised access forms allow delegates to set and change restricted access periods.</p> <p>Queensland State Archives has developed a new guide on the responsibilities of authorised officers in setting and changing restricted access periods and providing access to restricted records. The Queensland State Archives provided this guide to chief executives of responsible public authorities between May and June 2013 as part of the communication on renewing Access Authorisations. The guide</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	recommends that agencies have their own internal processes and controls to assist in decision-making.
<p>10 The CMC formulate a project plan, and report to the Committee on the costs, resourcing and time required to implement the project, to:</p> <ul style="list-style-type: none"> <li>• undertake an audit to identify whether there are any other original Fitzgerald Inquiry documents remaining on CJC/CMC files;</li> <li>• take remedial steps to replace original records with duplicate records, sourced from electronic or external sources; and</li> <li>• review its processes for the destruction of documents and provide training to relevant staff to enable them to identify potential Fitzgerald Inquiry records to minimise any future risk of the destruction of Fitzgerald Inquiry records.</li> </ul>	<p><i>Noted</i></p> <p>The Government notes that the CMC is responsible for this recommendation.</p> <p>A project plan has been drafted which partly addresses recommendations 3, 6, 10, 11 and 16 of the PCMC report which relate to Fitzgerald Commission of Inquiry documents held by the CMC. The proposed end date is 30 August 2013.</p> <p>An associated project involves a full review of CMC Records Management policy, procedure and work instructions. The tentative completion date for this project is September 2013. Training and embedding is a longer term proposition but will be conducted expeditiously and certainly from October 2013 once the training products are developed.</p>
<p>11 The CMC, in consultation with QSA, review its record keeping practices to ensure they are current and provide ongoing training to all staff in respect of their record keeping obligations.</p>	<p><i>Noted</i></p> <p>The Government notes that the CMC is responsible for this recommendation.</p> <p>The Queensland State Archives has met with the CMC and the CMC has confirmed it intends to conduct a thorough review of its recordkeeping practices and will address:</p> <ul style="list-style-type: none"> <li>• the need for recordkeeping cultural change across the organisation;</li> <li>• recordkeeping policies;</li> <li>• disconnects between work processes and recordkeeping processes;</li> <li>• procedures for capturing and managing common document types as records; and</li> <li>• the staffing profile of the records and information management unit.</li> </ul> <p>The Queensland State Archives will continue to provide ongoing advice and support to the CMC in its review of recordkeeping practices.</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
<p>12 The CMC initiate immediate comprehensive training of all officers, particularly those within the LSU, to ensure the highest levels of compliance with corporate governance obligations under corporate frameworks, charters, policies and the Code of Conduct</p>	<p><i>Noted</i></p> <p>The Government notes that the CMC is responsible for this recommendation.</p> <p>The CMC reports that plans have been in place for sometime for the external Chair of the Risk Management Committee (RMC) to conduct workshops with senior officers.</p> <p>The RMC's primary function is to assist the Commission in its responsibilities related to Section 61 of the <i>Financial Accountability Act 2009</i>. Section 61 requires all accountable officers and statutory bodies to establish and maintain appropriate systems of internal control and risk management. The RMC is an Advisory Committee only. It does not have any decision-making power and is only empowered to make recommendations to the Commission unless expressly delegated to it by the Commission for a specific decision/s.</p> <p>The external chair is Ms Marita Corbett who is a senior partner at BDO, a global accounting and advisory practice. Ms Corbett is a Chartered Accountant and Certified Internal Auditor with nearly 20 years experience in supporting organisations in improving operations and accomplishing objectives through the evaluation of decision making, risk management, control and governance processes.</p> <p>At this stage, it is proposed that the first workshop would be in mid-July and a follow-up workshop in early August to senior officers and managers, and then progressively rolled out to other employees.</p> <p>New employees will be inducted in all governance matters including risk management. The training will be recurrent every two years</p> <p>The CMC is also developing online training modules to facilitate the training of its officers in corporate governance obligations. Online training capability will</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>ensure that officers can learn at their own pace. The system will also provide an audit trail of who has completed the training.</p> <p>The online training requires careful consideration of user needs and the technology specification. At this stage, the CMC is documenting user needs and meeting with online training technology suppliers. However, the CMC is not in a position to advise when the system will become operational.</p>
<p>13 The Committee recommends that the provisions in the <i>Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013</i> be given permanent effect.</p>	<p><i>Partially accepted</i></p> <p>The protection afforded by section 346A of the <i>Crime and Misconduct Act 2001</i> (CMA) to persons who may be affected by the release of the documents should be continued in some form.</p> <p>Amendments in the <i>Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013</i> extended the operation of section 346A of the CMA from 8 May 2013 to 8 November 2013.</p> <p>The CMC has been asked to advise whether the protection needs to apply to all of the documents that were accessed between 1 February 2012 and 5 March 2013.</p> <p>Once this advice is received the Department of Justice and Attorney-General will, in consultation with the CMC, consider whether the provision's current scope and operation to all the documents accessed between 1 February 2012 and 5 March 2013 can be limited. .</p> <p>The Government will introduce and seek passage of necessary amendments to section 346A of the CMA prior to its expiry on 8 November 2013.</p>
<p>14 The Committee recommends that the Government establish a scheme whereby persons who have accessed, copied and used the released Fitzgerald Inquiry material between 2 February 2012 and 4 March 2013:</p>	<p><i>Not accepted</i></p> <p>The Government acknowledges the purpose of this recommendation is to provide another form of protection to those persons affected by the release of the</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
<p>a) return the material to the CMC;  b) make application for a 'clearance' in respect of any future use of the material; and  c) be entitled to a refund of expenses paid to QSA to obtain the documents and reasonable costs of compliance with (a) and (b) above.</p>	<p>Fitzgerald Commission of Inquiry documents by the CMC, by setting up an administrative scheme to allow the voluntary return of those incorrectly classified documents accessed by various researchers or journalists to the CMC.</p> <p>At the time the PCMC wrote its report, the operation of the new section 346A of the <i>Crime and Misconduct Act 2001</i> (CMA) was to cease on 8 May 2013. The PCMC in its Finding No. 16 refers to this administrative scheme as being an interim measure until such time as section 346A of the CMA has permanent operation.</p> <p>As noted in the Government Response to recommendation 13, the operation of section 346A has been extended from 8 May 2013 to 8 November 2013 and it is the Government's intention to introduce and seek passage of necessary amendments to section 346A of the CMA prior to its expiry on 8 November 2013.</p>
<p>15 The <i>Right to Information Act 2009</i> be amended to allow RTI access to documents of historical commission of inquiry documents, subject to a range of appropriate exclusions and criteria.</p>	<p><i>Under consideration</i></p> <p>The Government is currently considering the application of the <i>Right to Information Act 2009</i> to historical commissions of inquiry documents; and whether legislative amendment is necessary.</p>
<p>16 In the interim, the CMC should ensure there are appropriate internal dissemination delegations, and develop strict protocols around the assessment of the requests for access under section 18 of the <i>Public Records Act 2002</i>.</p>	<p><i>Noted</i></p> <p>The Government notes that the CMC is responsible for this recommendation.</p> <p>The CMC is reviewing its delegations, including the dissemination delegations, and will update relevant policies and procedures. The proposed end date for this work is 31 July 2013.</p>
<p>17 The Attorney-General and the Minister for Science, Information Technology, Innovation and the Arts, consider whether a coordinated and centralised method of housing and managing Commission of Inquiry documents is a practical and worthwhile project.</p>	<p><i>Not accepted</i></p> <p>A consistent process has been established for the management of Commission of Inquiry records, in accordance with the provisions of the <i>Public Records Act 2002</i>.</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>On the commencement of a Commission, the State Archivist writes to the appointed Commissioner advising that Commissions of Inquiry are public authorities for the purposes of the <i>Public Records Act 2002</i> and must therefore make and keep accurate records of its activities.</p> <p>Following the letter, the State Archivist meets with the Commissioner or their delegate to outline the recordkeeping responsibilities of the Commission and the management of the Commission's public records upon its closure. Queensland State Archives has also published a record keeping checklist to assist Commissions in managing their public records. This checklist is made available to the Commission staff as part of the information provided on a Commission's commencement.</p> <p>The State Archivist has approved a Retention and Disposal Schedule for use by all Queensland Commissions of Inquiry which sets out how long Commission records must be retained. All hard copy records of the Commission are transferred to the custody of Queensland State Archives shortly after the closure of the Commission. A regulation is made under the <i>Public Records Act 2002</i> nominating a responsible public authority, with responsibility for ongoing management of access restrictions. Queensland State Archives facilitates discussions and negotiations between the Commission and an appropriately identified public authority prior to the closure of a Commission and the making of the regulation.</p> <p>The formal confirmation of responsibility letter is sent by Queensland State Archives to the nominated public authority. This letter includes information on the public authority's ongoing responsibilities for the records.</p> <p>Currently, Queensland State Archives is unable to accept transfers of records in digital form, as there is no centralised Government digital archive. As a result,</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>digital records of a Commission, including websites, are managed by the relevant responsible public authority for as long as they are required to be kept in accordance with the Commissions of Inquiry Retention and Disposal Schedule. Queensland State Archives is currently undertaking research and planning for a future digital archive. Investment in a digital archive will enable more efficient and effective centralised storage and management of the digital records of Commissions of Inquiry.</p> <p>Given the above considerations and processes the Government does not consider the development of a coordinated and centralised method of housing and managing Commission of Inquiry documents to be a practical and worthwhile project.</p>
<p>18 The CMC needs to continually remind all staff of the CMC that the “CMC” is constituted by the Chairperson and all four part-time Commissioners. The internal culture that simply regards the Chairperson as a proxy for the entire Commission must change.</p> <p>The CMC needs to take a proactive approach to ensuring that breaches of its legislation (especially regarding delegations) and frameworks and policies adopted by the Commission are identified, rectified and offenders are appropriately dealt with in order to enforce the cultural change required.</p>	<p><i>Noted</i></p> <p>While the PCMC has directed this recommendation to the CMC; the Implementation Panel established by the Government and which includes the Acting CMC Chairperson has been tasked to oversee the implementation of this recommendation, given its relevance to the CMC’s operational and administrative structure.</p> <p>It will form part of the administrative and organisational review being undertaken into the CMC to ensure this message is reinforced with CMC staff.</p>
<p>19 The Committee recommends that the <i>Crime and Misconduct Act 2001</i> be amended before the appointment of the next Chairperson to cause structural separation of the role of Chairperson and CEO. Under this new model, the CEO (akin to a Director-General) will report directly to the Commission (“the board”).</p>	<p><i>Accepted</i></p> <p>The Implementation Panel established by the Government has been tasked to oversee the implementation of this recommendation. This recommendation will form part of the operational and administrative review of the CMC that is being overseen by the Implementation Panel.</p> <p>The administrative and organisational review will determine the most appropriate approach to achieve the separation of the</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>chairperson's current dual role.</p> <p>The Implementation Panel will report to the Premier and the Attorney-General and Minister for Justice on how it proposes the chairperson's current dual role is to be split.</p>
<p>20 The Committee recommends that the present, broad and subjective obligations on the Chairperson or the CEO under section 329 of the <i>Crime and Misconduct Act 2001</i> be increased to include:</p> <ul style="list-style-type: none"> <li>a) Any allegations of unauthorised disclosure of information or other material that is confidential; <ul style="list-style-type: none"> <li>i. Whether the dissemination breaches the CMC Act; or</li> <li>ii. Breaches some other legislation; or</li> <li>iii. Might not breach any legislation;</li> </ul> </li> <li>b) Any instance of registers not being up to date and complete or required documentation is not on file and correctly noted on the registers;</li> <li>c) Any instance of required authorisations for the exercise of power not being properly obtained, regardless of whether acting without authority was inadvertent or deliberate;</li> <li>d) Any instance of any policy or procedural guidelines set by the Commission not being strictly complied with, regardless of whether the breach was inadvertent or deliberate;</li> <li>e) Any allegation of an inappropriate use of power;</li> <li>f) Any significant matters (as defined within the CMC's Corporate Governance Framework.</li> </ul>	<p><i>Accepted</i></p> <p>Section 329 of the <i>Crime and Misconduct Act 2001</i> will be amended to clarify the circumstances when the CMC chairperson is required to notify the PCMC of improper conduct or conduct that may amount to improper conduct.</p>
<p>21 The Committee considers that the <i>Crime and Misconduct Act 2001</i> should be amended to provide that the Committee may refer a matter for the Parliamentary Commissioner to investigate and the report on a matter pursuant to section 295(2)(d) and the report of the investigation may, despite sections 8 and 9 of the <i>Parliament of Queensland Act 2001</i>, be forwarded to the Chairperson of</p>	<p><i>Accepted</i></p> <p>The Government notes that the role of the Parliamentary Commissioner is being considered by the Implementation Panel under recommendation 11 of the Independent Advisory Panel's report.</p> <p>Given the PCMC's recommendation also relates to the role of the Parliamentary</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
<p>the CMC who may use the Commissioner's investigation and findings in the report as grounds for disciplinary action and an indication of whether disciplinary action is warranted. Furthermore, the current impediments to the Parliamentary Commissioner holding hearings in section 318(1) are unduly restrictive in respect of matters already referred to the Commissioner by the Committee under section 295(2)(d) and should be changed.</p> <p>It is noted that nothing in these recommendations seeks to derogate from the role of the Chairperson in determining if grounds for disciplinary action are established or what disciplinary action is warranted and imposed, or the Commission's authority to sanction the Chairperson's recommendation</p>	<p>Commissioner, it is being considered together with recommendation 11 as noted above.</p> <p>The Implementation Panel will report to the Premier and the Attorney-General and Minister for Justice following its consideration of recommendation 11 of the Independent Advisory Panel's report and this recommendation.</p>
<p>22 That the State Archivist review all policies and procedures relating to the transfer of agency records to the QSA to ensure they are clear.</p>	<p><i>Accepted</i></p> <p>The PCMC report identified that some agencies may not be fully aware of their responsibilities for records in the custody of Queensland State Archives, in particular with regard to the release of item-level metadata in the public catalogue. Previously, Queensland State Archives' practice had been to discuss this matter at transfer meetings, but it was not explicitly communicated in writing.</p> <p>In response to the recommendation, Queensland State Archives has updated all transfer correspondence to ensure it covers the release of metadata, and has revised transfer and associated Restricted Access Period (RAP) procedures to help foster greater communication between staff responsible for transfer and staff responsible for setting RAPs within the agency.</p> <p>In addition, the <i>Transferring Public Records to Queensland State Archives</i> guideline is being revised and a new brief guide to the transfer process is being developed to highlight key decisions and responsibilities of the agency. It is proposed the documents</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	will be published on the Queensland State Archives website and available to public authorities in August 2013.
23	<p data-bbox="212 436 762 701">That the QSA write to all agencies which had transferred closed records to the QSA where those closed records have publicly accessible metadata to advise those agencies of the public status of the metadata and to seek direction as to whether the metadata should be publicly accessible or not.</p> <p data-bbox="791 436 1369 1305"><i>Accepted</i></p> <p data-bbox="791 504 1369 734">During April and May 2013, the State Archivist wrote to all agencies with responsibility for closed records in the custody of Queensland State Archives to ask that they undertake a review of the metadata for closed records to determine whether it can be publicly available.</p> <p data-bbox="791 772 1369 1070">On 8 April 2013, the Minister for Science, Information Technology, Innovation and the Arts, the Honourable Ian Walker MP, gave written directions to the Director-General of his department, with responsibility for Queensland State Archives, to ensure that metadata for records subject to a restricted access period was removed from the public catalogue.</p> <p data-bbox="791 1108 1369 1305">In response to this directive, the metadata for all closed records was removed from QSA's catalogue during April 2013. Further details regarding the removal of the metadata is discussed in the response to recommendation 24.</p>
24	<p data-bbox="212 1348 762 1579">That the Minister for Science, Information Technology, Innovation and the Arts, report to the Parliament on any other instances where public access to detailed metadata was incorrectly provided by the QSA and the agency involved was unaware.</p> <p data-bbox="791 1348 1369 2013"><i>Accepted</i></p> <p data-bbox="791 1400 1369 1729">The Government notes that on 8 April 2013, the Minister for Science, Information Technology, Innovation and the Arts, the Honourable Ian Walker MP, gave written directions to the Director-General of the Department of Science, Information Technology, Innovation and the Arts to ensure that metadata for records subject to a restricted access period (RAP) was removed from the public catalogue.</p> <p data-bbox="791 1747 1369 2013">In response to this directive, the metadata for all closed records was removed from Queensland State Archives' catalogue during April 2013. All item-level metadata for closed records will remain unavailable until the agency confirms whether or not it wishes to re-instate all or some of the metadata in the public catalogue.</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>Queensland State Archives is currently undertaking a program of work in partnership with responsible agencies, to investigate the extent to which detailed metadata about closed records was released in the public catalogue, and is liaising with the 62 agencies responsible for closed records in the State's archival collection.</p> <p>The extent of agency awareness of the release of metadata, either at the time of transfer or now, will not be able to be determined with any certainty. It was Queensland State Archives' practice to communicate the releasing of metadata in discussions with agency officers at the time of transfer. It is possible that while officers of the public authorities in question had this awareness at the time of transfer and/or of the setting of the RAPs, this knowledge may not have been adequately conveyed by them to their successors, or to other senior staff within their agency. Given the periods of time that have elapsed since transfer in many instances (some records were transferred in the 1970s and many in the 1980s) and that no signed authorisation to release the item information was requested or provided, it is not possible to determine the extent of agency awareness of this practice.</p> <p>However, of the 714,000 items closed to public access, metadata for 122,000 or 17% of these records had been withheld from the catalogue on agency request, indicating that many agencies had actively made decisions regarding appropriate management of the metadata.</p> <p>The work currently being undertaken instead focuses on a review of item-level metadata for closed records to determine whether any sensitive information was provided in the public catalogue prior to the abovementioned removal of the metadata in the public catalogue. As part of that review agencies will consider whether or not metadata for the closed record can be restored to the public catalogue.</p> <p>The <i>Public Records Act 2002</i> provides that the responsibility for identifying whether or</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>not metadata is sensitive and thus whether it should be made available in the public catalogue rests with the public authorities that own the records.</p> <p>Due to the volume and age of information involved, these reviews will take agencies a number of months to complete. The 62 public authorities have approximately 714,000 records at Queensland State Archives which are subject to a current RAP, that is, they are closed. The majority of these closed records are over 30 years old, and more than 100,000 are over 50 years old.</p> <p>The time required for public authorities to complete the metadata reviews for their closed holdings will depend on the resources available to each public authority. Initial indications from some public authorities are, however, that the overwhelming majority of the metadata is not sensitive.</p> <p>The Minister for Science, Information Technology, Innovation and the Arts will provide an update to the Parliament by December 2013 on the progress of the above review.</p> <p><i>Revision of QSA practices, procedures and advice</i></p> <p>In order to prevent a similar issue occurring in the future, Queensland State Archives has changed its practice for managing item-level metadata for records still subject to RAPs.</p> <p>Previously, Queensland State Archives released the information unless instructed otherwise. Now, agencies are required to make an explicit decision whether or not the item-level metadata for closed records is to be released in the public catalogue. This decision is noted on the revised RAP form signed by an authorised officer as part of the transfer process.</p> <p>New advice has been developed for agencies clarifying the responsibilities of authorised officers and factors to consider when setting and changing RAPs, and determining whether item-level metadata</p>

Parliamentary Crime and Misconduct Committee Recommendation	Queensland Government Response
	<p>can be publicly released. This advice is being used to further clarify understanding at an agency level and includes the provision of new or revised publications:</p> <ul style="list-style-type: none"> <li>• Public records brief – Restricted Access Periods</li> <li>• Public records brief – Delegated Access Authorisations</li> <li>• Guideline for transferring public records to Queensland State Archives.</li> </ul>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>1 There should be an administrative re-structure of the CMC to be conducted by the Public Service Commissioner. The reasons for this are the divestment of education and some research functions from it, its increasing bureaucratisation, its loss of prioritisation of focus, the likely reduction in complaints, and the possible division of its functions between two bodies if that is administratively justifiable, likely to save expense and can be done without in any way compromising the important core functions which the CMC now has.</p> <p>The CMC should in all respects be bound to cooperate.</p>	<p><i>Accepted</i></p> <p>The Government has tasked an Implementation Panel to oversee an organisational and administrative review of the CMC that will be undertaken by the Public Service Commission working with the CMC and such expert external assistance as may be required.</p> <p>The organisational and administrative review will also consider recommendations 4, 12 and 15 of the Independent Advisory Panel report and recommendations 2, 4, 18, and 19 of the PCMC report as these recommendations relate to the organisational structure of the CMC.</p> <p>The review is to be given priority by the Implementation Panel because aspects of it will determine, in many respects, what legislative amendments are required to facilitate an administrative and organisational restructure of the CMC.</p> <p>The Premier and the Attorney-General and Minister for Justice will be informed of the outcome of the review as key milestones are achieved.</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>2 It ought to be a condition of employment of persons performing management or supervisory roles within the public service agencies that they take all reasonable steps to ensure that staff under their management or supervision do not commit any act of official misconduct. A failure to take reasonable steps to prevent that should itself be ground for termination of the supervisor's or manager's employment. We do not think that the current provisions in the <i>Public Service Act 2008</i> (Qld) adequate to achieve this result.</p> <p>The <i>Public Service Act 2008</i> (Qld) ought to be amended along these lines:  <i>12N Additional responsibilities of chief executive officers and managers</i>  <i>(1) In this section –</i>  <i>'manager' means a person working in a unit of public administration whose duties involve or include the supervision or management of other persons working in a unit of public administration (the 'staff');</i>  <i>(2) It is a condition of the employment of a manager that the manager, at all times during the course of his or her employment, take all reasonable steps in the supervision or management of staff to make sure that such staff do not commit any act of official misconduct.</i>  <i>(3) Breach by a manager of the condition in s12N(2) shall be deemed to be official misconduct.</i></p>	<p><i>Accepted</i></p> <p>The Government accepts that in the first instance, public sector agencies are responsible for the actions of their staff and to ensure public sector employees are, and remain, honest, fair and open. Public sector managers are therefore instrumental in the proper management of misconduct in their agencies.</p> <p>The Implementation Panel is to consider this recommendation and provide advice to the Premier and the Attorney-General and Minister for Justice on how best to implement the recommendation, including any alternative that will achieve a similar outcome as proposed in this recommendation.</p>
<p>3 There must be a large reduction in the matters going to, and being dealt with (even for the purposes of devolution) by the CMC.</p>	<p><i>Accepted</i></p> <p>The Government agrees the number of complaints being made to the CMC act as a distraction for the CMC and divert the limited resources of the CMC away from its primary functions of crime prevention and detection and the investigation of official misconduct.</p> <p>The Government will achieve this outcome</p>

Independent Advisory Panel Recommendation	Queensland Government Response
	<p>through adopting the measures, as determined by the Implementation Panel as appropriate, and based on the recommendations in the report by the Independent Advisory Panel. These measures include, for example, raising the threshold for what constitutes 'official misconduct' as proposed in recommendation 3A of the Independent Advisory Panel report.</p>
<p>3A The <i>Crime and Misconduct Act 2001</i> should be amended in the manner indicated below so as to raise the threshold of what conduct constitutes "official misconduct":</p> <p><i>'Conduct' includes neglect, failure and inaction.</i></p> <p><i>'Misconduct' is conduct, or a conspiracy or attempt to engage in conduct, that would, if proved, be –</i></p> <p><i>(a) a criminal offence; or</i></p> <p><i>(b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment in a unit of public administration.</i></p> <p><i>"Official misconduct" is misconduct that –</i></p> <p><i>(a) affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of a unit of public administration or any person holding an appointment in a unit of public administration; or</i></p> <p><i>(b) is engaged in by a person who holds, or at the time held, an appointment in a unit of public administration and which involves –</i></p> <p><i>(i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or</i></p> <p><i>(ii) a breach of the trust placed in the person as the holder of the appointment; or</i></p> <p><i>(iii) a misuse of information or material acquired in or in connection with the performance of the person's</i></p>	<p><i>Accepted</i></p> <p>The Government accepts that the current definition of 'official misconduct' in the <i>Crime and Misconduct Act 2001</i> (CMA) provides for a lower threshold for complaints being potentially classified as 'official misconduct' if they were to be proved. The outcome is the CMC deals with more complaints than what it should be doing.</p> <p>This recommendation is one of the measures proposed to reduce the number of complaints dealt with by the CMC.</p> <p>The Independent Advisory Panel in its report noted that, where a recommendation proposed a legislative amendment, the proposed draft was to be used as a guide to indicate the substance of the desired legislative change.</p> <p>There may be further refinements to the provision and its intersection with the definition of 'misconduct' in the <i>Public Service Act 2008</i>, that will achieve the Independent Advisory Panel's intended outcome to reduce the number of complaints made to the CMC.</p> <p>The Implementation Panel will further consider this recommendation and provide advice to the Premier and the Attorney-General and Minister for Justice on how best to implement the recommendation's intention.</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p><i>functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.</i></p> <p>The term "misconduct", wherever it appears in the act apart from the term "official misconduct" or "police misconduct", should be replaced by "official misconduct or police misconduct".</p> <p>The definition of "police misconduct" should be amended by the substitution of the word "behaviour" for the word "conduct".</p>	
<p>3B The <i>Crime and Misconduct Act 2001</i> should be amended to require all complaints to be accompanied by a statutory declaration (or, in case of urgency, within 7 days of a complaint) to the effect that:</p> <ul style="list-style-type: none"> <li>(a) the complainant has read and understands the relevant sections (setting them out in the declaration) of the <i>Crime and Misconduct Act 2001</i>;</li> <li>(b) that the complaint is not a baseless one; and</li> <li>(c) that the complainant will keep the matters the subject of the complaint (and its making) confidential for all purposes unless and until a decision is made upon it that results in a criminal prosecution or proceedings in respect of it in QCAT.</li> </ul> <p>We emphasise that the statutory declaration should quote the definitions of "official misconduct" and "baseless complaint".</p>	<p><i>Accepted</i></p> <p>This recommendation aims to address the issue of vexatious and malicious complaints by requiring complainants to sign a statutory declaration that attests to certain matters, as set out in the body of the recommendation.</p> <p>The Government acknowledges requiring the complainant to make a statutory declaration, will not of itself reduce vexatious or intractable complaints, when the person has the honest belief they have a genuine complaint, despite there being no substance to the complaint.</p> <p>Alternatively, there is merit in considering expanding the CMC's discretion to decide when it may take no action, discontinue action or dismiss a complaint, for example when the CMC believes the complainant may have an ulterior motive or it could be perceived the complainant has an ulterior motive, such as to gain a political advantage during or leading up to an election.</p> <p>The Implementation Panel will further consider this recommendation and provide advice to the Premier and the Attorney-General and Minister for Justice on alternative legislative amendments to address the issue of vexatious and malicious complaints.</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>3C The CMC should be required to replace the present online complaint lodgement system with one that accurately states all of the relevant legal requirements for the making of a genuine and not baseless complaint, including an accurate statement of the definition of official misconduct and police misconduct under the <i>Crime and Misconduct Act 2001</i>. The CMC should also be required to ensure that all of its online and printed publications accurately and not misleadingly state the relevant legal requirements for the existence of official misconduct or police misconduct.</p>	<p><i>Accepted</i></p> <p>The Government notes that the CMC is responsible for this recommendation.</p> <p>The CMC has committed to update its online complaint lodgement system and all related publications. However, this cannot occur until such time as the proposed changes and legislative amendments to the complaints management system have been finalised, as is proposed by this Government response.</p>
<p>3D The <i>Crime and Misconduct Act 2001</i> should be amended to enable and ensure the prosecution of those who make baseless complaints. Baseless complaints should be defined in the Act to mean:</p> <ol style="list-style-type: none"> <li>complaints that are malicious, vexatious, reckless or exclusively vindictive; or</li> <li>complaints not made on the basis of something seen or heard by the complainant (and not made on the basis of information provided by a credible person claiming to have seen or heard something sufficient to form a basis for a complaint); or</li> <li>complaints made without reference to, and consideration of the definitions of "official misconduct" and "police misconduct" in the <i>Crime and Misconduct Act 2001</i>.</li> </ol> <p>There should be a substantial penalty for infringement of this law. Further provision should be made for compensation to be ordered by a Court of appropriate jurisdiction to be paid by the maker of a baseless complaint in respect of costs and expenses reasonably incurred by the CMC and by the subject of a baseless complaint in responding to or dealing with it.</p>	<p><i>Accepted</i></p> <p>This recommendation, like recommendation 3B above, aims to address the issue of vexatious and malicious complaints by proposing a new definition of 'baseless complaint' which would result in the prosecution of any person who made a baseless complaint. In addition, the person making the baseless complaint may be required to pay compensation to the CMC or the person the subject of the baseless complaint.</p> <p>The Government is concerned the proposed definition of 'baseless complaint' may prevent the CMC from investigating matters that may reveal serious misconduct or corruption. For example, when a complainant does not have direct knowledge of the matters forming the complaint as set out in the second limb of the proposed new definition.</p> <p>However, the Implementation Panel will consider other options that achieve the same intended outcome. These options include those matters being considered by the Implementation Panel in recommendation 3B.</p> <p>The Implementation Panel will also consider whether there should be any amendments to the current section 216 of the <i>Crime and Misconduct Act 2001</i> to strengthen the CMC's ability to prosecute,</p>

Independent Advisory Panel Recommendation	Queensland Government Response
	<p>in appropriate cases, complainants who make vexatious or frivolous complaints.</p> <p>As noted above, the Implementation Panel will consider the most appropriate legislative amendment and provide advice about how the intention of the recommendation can be achieved.</p>
<p>3E The <i>Crime and Misconduct Act 2001</i> should be amended to raise the threshold for mandatory notification of matters to the CMC by public officials. Section 38 ought be amended so that the duty arises only where the public official “<i>reasonably suspects</i>” that a complaint involves or may involve official misconduct.</p>	<p><i>Accepted</i></p> <p>The Government accepts there is a need to reduce the number of complaints being made to the CMC and that there should be more rigour around the complaints management system, including the mandatory notification by public officials under section 38 of the <i>Crime and Misconduct Act 2001</i>.</p> <p>This recommendation is one of the measures proposed to reduce the number of complaints dealt with by the CMC.</p> <p>The Independent Advisory Panel in its report noted that where a recommendation proposed a legislative amendment, the proposed draft was to be used as a guide to indicate the substance of the desired legislative change.</p> <p>As noted above, the Implementation Panel will consider the most appropriate legislative amendment and provide advice about how the intention of the recommendation can be achieved.</p>
<p>3F The CMC should be obliged to instigate prosecutions for egregious cases of baseless complaints.</p>	<p><i>Accepted</i></p> <p>This recommendation intends to prevent malicious or vexatious complaints being made by ensuring the CMC institutes prosecutions against those persons making such complaints.</p> <p>The Government is of the view that the decision whether or not to prosecute must continue to be a matter for the CMC’s discretion; in the same way that other offences under the <i>Crime and Misconduct Act 2001</i> are a matter for CMC’s discretion. However the Government encourages the</p>

Independent Advisory Panel Recommendation	Queensland Government Response
	<p>CMC to consider actively pursuing prosecution in appropriate cases.</p> <p>As noted in the response to recommendation 3D above, the Implementation Panel is considering amendments to the current section 216 of the <i>Crime and Misconduct Act 2001</i> to strengthen the CMC's ability to prosecute in appropriate cases complainants who make vexatious or frivolous complaints.</p>
<p>4 The CMC's preventative function should cease, except for such advice and education as may be appropriate and incidental to matters uncovered or found by the CMC in the course of an investigation. The remaining preventative functions should largely be undertaken by the Public Service Commission, except that we wish to make it clear that we are not recommending the recruitment of any substantial additional number of people to perform these functions there. We reiterate that integrity, to the extent necessary, should be taught as an obvious element of overall diligence: "integrity" has become its own over-elaborate industry involving repetition of the obvious, and clothing it in a morass of high-flown aspirational and often bureaucratic language. The provisions of the <i>Public Service Act 2008</i> should be accordingly amended.</p> <p>Such functions therefore as the CMC presently exercises under sections 24(c), 24(e), 24(h), 33(a) and section 34(b) of the <i>Crime and Misconduct Act 2001</i> ought to be transferred to the Public Service Commission. There should be inserted into the <i>Crime and Misconduct Act 2001</i> the following provision:</p> <p><i>When, in the course of carrying out its other functions under this Act, it comes to the notice of the Commission that conduct in the public sector may be improved, the Chairperson may notify the appropriate manager in the relevant part of the public sector of the possibility of improvement and ways</i></p>	<p><i>Accepted</i></p> <p>The Government notes that the CMC's current preventative and educative functions extend beyond the Queensland public sector to local government and universities.</p> <p>The Government has accepted that there is to be an organisational and administrative review of the CMC and that this review will also consider whether the CMC's preventative and educative functions should be transferred or redesigned to the Public Service Commission.</p> <p>The transfer or redesign of these functions may contribute to the CMC's capacity to concentrate on its primary major crime and official misconduct functions.</p> <p>The Implementation Panel will oversee the organisational and administrative review. The Premier and the Attorney-General and Minister for Justice will be informed of the outcome of the review as key milestones are achieved.</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p><i>and means of improvement.</i></p> <p>Section 12(c) of the <i>Ombudsman Act 2001</i> should be repealed to remove from the Ombudsman general responsibility for administrative practices and procedures.</p>	
<p>5 In order to improve standards of conduct and diligence, and in replacement in part at least of Ethical Standards Units, there ought be established with the Public Service Commission an Inspectorate empowered to inspect as it sees fit, whether without notice or otherwise, any or all Departments and agencies of Government, and to have similar coercive powers to the Auditor-General's much along the lines of the Federal Public Services Inspectorate which existed in the past.</p>	<p><i>Under consideration</i></p> <p>The Government accepts that there needs to be systemic change in how public sector integrity issues are managed by public sector agencies, including the interface with the Public Service Commission. The way this can be achieved so there remains rigorous and strong oversight of public sector agencies, without creating an additional and superfluous bureaucracy, requires further consideration.</p> <p>As noted above, the Implementation Panel will consider the most appropriate approach and provide advice about how the intention of the recommendation can be achieved.</p>
<p>6 With the assumption of true managerial responsibility, and sanctions for failure to accept it, the need for ethical standards units within Departments should disappear or at least be greatly reduced. So too the emphasis upon unnecessary and duplicated integrity education will reduce. We recommend an orderly reduction in Ethical Standards Units and their numbers.</p>	<p><i>Under consideration</i></p> <p>The Government accepts that there needs to be systemic change in how public sector integrity issues are managed by public sector agencies. The way this can be achieved without leaving agencies with no or greatly reduced capacity to effectively manage integrity issues requires further consideration.</p> <p>As noted above, the Implementation Panel will consider the most appropriate approach and provide advice about how the intention of the recommendation can be achieved.</p>
<p>7 Save for urgent applications in pending matters, the powers of the Director of Public Prosecution under the <i>Criminal Proceeds Confiscation Act 2002</i> for the criminal proceeds confiscation regime (which the Director does not wish to retain) ought, subject to this condition, vest in the CMC. The condition is that the CMC satisfy the Executive Government that it has within the legal and accounting</p>	<p><i>Accepted in principle</i></p> <p>The Attorney-General and Minister for Justice has committed to a review of the <i>Criminal Proceeds Confiscation Act 2002</i> to commence in the second half of 2013.</p> <p>This recommendation proposes a significant change in the way in which applications following convictions will be</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>capacity extending to a knowledge of accounts, financial affairs, commercial law, property law, trusts, equity and tracing to administer the regime. If that condition is satisfied, such procedural and legislative changes as may be necessary should be made.</p>	<p>undertaken. It is therefore more appropriate for this recommendation to be considered as part of the abovementioned proceeds of crime review.</p>
<p>8 The law should be that it is an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the fact of any investigation by the CMC subject only to three exceptions. The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it, will be permissible. The second exception should be as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure. The third is the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could of course occur if otherwise required by law, such as by Court processes or Court order.</p> <p>The restriction upon publication or disclosure should be permanent in the case of no further action by the CMC, an absence of any finding against, or a “clearance” of a person or persons, unless that person or persons make the publication or disclosure themselves or give prior written consent to it. If, however, the investigation leads to criminal proceedings or disciplinary proceedings in QCAT, then, from the time of commencement of those proceedings, no restrictions on publication or disclosure should remain.</p> <p>There should be a suitable deterrent penalty for unlawful publication or disclosure by anyone.</p>	<p><i>Accepted in principle</i></p> <p>The Government accepts that the disclosure of information about a complaint made to the CMC, including its nature, subject or substance is to be prohibited except in limited circumstances. This is consistent with most investigative processes undertaken by police or other bodies.</p> <p>The dissemination of any information about a complaint that identifies an individual may lead to irreparable damage to the subject of the complaint and his or her family or associates and also jeopardise any ongoing investigation by the CMC.</p> <p>The <i>Crime and Misconduct Act 2001</i> should include provisions that prevent the disclosure of information about a complaint once it has been made to the CMC.</p> <p>However, the release of information about a complaint may be justified in circumstances not addressed by the recommendation. These include, among others: the CMC may refer the matter to another integrity agency; the complainant makes a complaint to the PCMC about the manner in which the CMC dealt with the complaint; and the complainant commencing legal proceedings (such as defamation, wrongful arrest, trespass and wrongful dismissal).</p> <p>The Implementation Panel will provide advice about how the intention of the recommendation can be achieved.</p>
<p>9 Consideration should be given to the harmonization of the Standing Orders of the Parliamentary Committee with such</p>	<p><i>Noted</i></p> <p>This is matter for the consideration by the</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>new provisions as are introduced into the <i>Crime and Misconduct Act 2001</i> regarding the confidentiality of complaints.</p>	<p>Parliament following any changes made to the <i>Crime and Misconduct Act 2001</i> regarding the confidentiality of complaints under recommendation 8.</p> <p>Subject to the passage of relevant legislative amendments, the Premier will write to the Clerk of the Parliament regarding possible changes to Standing Orders. The Government notes that consideration should be given to the powers of the PCMC to report on a matter it considers should be brought to the attention of the Parliament.</p> <p>Consideration is being given to the PCMC reporting to Parliament on a more regular basis.</p>
<p>10 The <i>Right to Information Act 2009</i> ought to be amended to restrict Departments and agencies (including the Information Commissioner) from being required to give reasons for refusal to produce documents, the restriction to remain in place for 9 months. Reasons should only be obligatory if and when the complaint results in criminal proceedings in QCAT; or, the subject of subjects of a complaint, authorise in writing the publication or disclosure of the complaint. The exception to this would be if the Supreme Court earlier determines there to be a compelling public interest in the disclosure of the reasons. We have selected 9 months on the basis that by then the CMC should have completed any investigation it undertakes.</p> <p>The excuse from the requirement to give reasons must be general because if it is confined to reasons in respect of a CMC investigation, then not giving reasons would immediately identify that the matter was under investigation by the CMC and defeat the purpose of the provision. We recognise that this is a far-reaching provision but cannot see any other solution that would prevent leakage of information about the existence, content or subject of a current complaint or investigation. The severity of the provision</p>	<p><i>Accepted in principle</i></p> <p>The proposed amendment raises a number of important and complex matters requiring further and ongoing discussion with departments and agencies including the Office of the Information Commissioner.</p> <p>The Implementation Panel will provide advice about how the intention of the recommendation can best be achieved.</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>is tempered by two important qualifications that we recommend apply. Namely that the embargo is limited to a 9 month period, and that it be subject to contrary order by the Supreme Court in situations of compelling public interest.</p> <p>Similar amendments will be required to the <i>Ombudsman Act 2001</i> to restrain the Ombudsman from giving reasons for declining to intervene in a matter.</p>	
<p>11 The Parliamentary Commissioner ought to have the statutory power, and the resources, to investigate all complaints of official misconduct within the CMC and have separate power to make investigations on his or her own initiative if thought by him or her appropriate. Such investigations ought to be conducted independently of, but subject to an obligation to report on them, when completed, to the Parliamentary Committee. The Parliamentary Committee's powers to make its own inquiries and investigations should remain. The Act should be amended to provide accordingly.</p>	<p><i>Accepted</i></p> <p>The Government accepts there is merit in considering an expansion to the role of the Parliamentary Commissioner to investigate complaints made about the CMC, but how and in what manner this can be achieved will be considered by the Implementation Panel.</p> <p>The Implementation Panel is also considering recommendation 21 of the PCMC report that relates to the Parliamentary Commissioner's role.</p> <p>The Implementation Panel will report to the Premier and the Attorney-General and Minister for Justice following consideration of these recommendations.</p>
<p>12 The undertaking of non-specific research by the CMC is a distraction, and not such as to justify the expense and resources needed for it. The research undertaken by the CMC should be limited to that which is referred to the CMC by government, with the qualification that it should be at liberty to make submissions to the Attorney-General, that it be permitted to research particular issues or matters on the ground that they are emergent, important and not able to be addressed by other bodies, or is research incidental to an investigation of a specific matter. No such research should be undertaken without the approval in advance from the Attorney-General.</p>	<p><i>Accepted</i></p> <p>The organisational and administrative review of the CMC, to be overseen by the Implementation Panel, will consider this recommendation.</p> <p>However, the Government accepts that the CMC research function requires further focus and refinement.</p> <p>The CMC has confirmed it has recently changed its research focus and its research activities to supporting its crime and misconduct functions, and matters referred to it by government.</p> <p>As noted above, the Implementation Panel will consider the most appropriate legislative amendment and provide advice</p>

Independent Advisory Panel Recommendation	Queensland Government Response
	about how the intention of the recommendation can best be achieved.
<p>13 We recommend that no further Memoranda of Understanding be entered into by the CMC with other agencies, departments of Government or other bodies, and those in existence be allowed to lapse, for the reasons we have given elsewhere: in short because they are unnecessary and can lead to over-reach and confusion as to responsibilities.</p>	<p><i>Not accepted</i></p> <p>The Government acknowledges that this is an operational matter for the CMC.</p> <p>Memoranda of Understanding are currently used by the CMC in relation to telephone interception powers, exchange of information with other law enforcement agencies, obtaining information from non-law enforcement agencies, establishing steps to give effect to its witness protection program and effective cooperation with other law enforcement agencies that are involved in different elements of an investigation</p> <p>The Government accepts the PCMC's advice that '<i>... this recommendation could negatively impact upon the effectiveness of the CMC's operations and that of the other relevant agencies and bodies involved.</i>'</p>
<p>14 We are concerned about the possibility of conflicts of interest in other departments of Government. We recommend that the CMC pay close attention to the possibility of these: for example, in asking the Auditor-General to participate in an investigation of matters or events which might earlier have come to the attention of the Auditor-General, or arguably could or should have done so.</p>	<p><i>Noted</i></p> <p>This recommendation is the responsibility of the CMC.</p> <p>The Government notes the CMC has accepted this recommendation and will ensure there are adequate systems and processes in place so that any potential conflicts of interest that may arise during a joint investigation are identified at the earliest possible occasion and satisfactorily dealt with.</p>
<p>15 We can see no justification for other than one media liaison officer or trained media person at the CMC. Good public relations depend upon good performance, not upon self-promotion, or what some member or employee of CMC says or proclaims about it.</p> <p>Whatever the role of the CMC may be, it is not to impart spin to what it bowls up to the public, but to provide, as far as is</p>	<p><i>Under consideration</i></p> <p>The organisational and administrative review of the CMC, to be overseen by the Implementation Panel, will consider this recommendation.</p> <p>The CMC advise their media unit comprises two staff, one senior and one junior media officer, who advise on media issues and deal directly with media requests.</p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>necessary, a straight up and down account of its activities. Just as good performance will gain public confidence, bad performance, as in the case of the shredded and disclosed documents, will diminish it. And all the self-promotion, coloured diagrams and glossy publications that the CMC might produce will not change a scintilla of that.</p> <p>We recommend that budgetary allocations take account of this recommendation</p>	<p>In contrast, the communications unit, comprising staff with journalistic qualifications, do not deal with the media and rather, edit, proofread and manage the production and printing of CMC publications and manage the external website and intranet.</p> <p>As noted above, the Implementation Panel will consider the most appropriate approach and provide advice about implementation of this recommendation.</p>
<p>16 Public meetings with, and inquiries of the CMC by, the Parliamentary Committee have, since 30 June 2010 at least, been convened only in connection with the triennial reviews it undertakes under section 282(f) of the <i>Crime and Misconduct Act 2001</i> and the inquiry which the Parliamentary Committee was undertaking immediately before this Report was finalised concerning the inappropriate release and destruction of Fitzgerald Inquiry documents. No doubt quite a deal of what passes between the CMC and the Parliamentary Committee is sensitive or otherwise confidential. But much of it need not necessarily be. A body such as the CMC which has the role of ensuring transparency by others should itself be purer than Caesar's wife.</p> <p>We recommend that the <i>Crime and Misconduct Act 2001</i> be amended to require that the Parliamentary Committee's hearings be public, subject only to the retention of the principle of confidentiality with which we deal elsewhere in this Report, the necessity not to compromise uncompleted investigations or covert functions, and non-disclosure of the making of complaints.</p>	<p><i>Accepted</i></p> <p>The Government is of the view that, for the most part, the Parliamentary Crime and Misconduct Committee should, like other committees of the Parliament, hold its hearings in public.</p> <p>The Government notes that the PCMC in Report No. 90, <i>Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Commission of Inquiry documents</i> at page 87 indicates that it 'will move forward with a presumption that all joint meetings with the CMC and the Parliamentary Crime and Misconduct Commissioner will be open to the public unless the Committee accepts that there are justifiable reasons for part of those proceedings to be closed to the public'.</p> <p>The Government further notes that the PCMC has commenced public hearings of its regular meetings with the CMC, apart from any sensitive information which is heard in camera.</p> <p>The Government will work with the PCMC to ensure that the amendment requiring PCMC hearings to be in public achieves the correct balance and has due regard to the fact that some sensitive and confidential matters cannot be dealt with in a public hearing.</p>
<p>17 An Implementation Panel consisting of the Public Service Commission, the</p>	<p><i>Accepted in principle</i></p>

Independent Advisory Panel Recommendation	Queensland Government Response
<p>Chairperson of the CMC, and two others (not a current or former public service) including a senior lawyer reporting directly to the Attorney-General and Minister for Justice and the Premier should, we think, be established.</p> <p>Both self-interest on the part of some, and institutional defensiveness, will be forces of resistance to the implementation of recommendations. That is not to say that there should not be any public debate about them. We would welcome that, just as we would welcome disclosure in full of our Report, the submissions and all of our correspondence with the CMC and others (subject only to suitable protection of those who have participated and ourselves). But because such resistance can be expected and also because implementation may be effected in different ways, we recommend that such a Panel be constituted to oversee and assure as speedy an implementation as possible of such of our recommendations as are adopted.</p>	<p>The Government supports, and has established an Implementation Panel. The Government has taken a different approach to the panel's membership to that proposed in the recommendation.</p> <p>The Implementation Panel established by the Government consists of: the Director-General, Department of Justice and Attorney-General (Chair); Director-General, Department of the Premier and Cabinet; Commission Chief Executive, Public Service Commission; and Acting Chairperson, CMC</p> <p>The Implementation Panel is responsible for overseeing and directing the consideration and implementation of the Independent Advisory Panel's recommendations (except recommendations 7 and 9 relating to proceeds of crime confiscation and Standing Orders respectively); and also related recommendations 2, 4, 18, 19 and 21 of the PCMC report.</p> <p>The Implementation Panel will provide regular reports to the Premier and the Attorney-General and Minister for Justice.</p> <p>The Implementation Panel's work includes oversight of the administrative restructure of the CMC as provided for by recommendation 1 in the Independent Advisory Panel's report. The Implementation Panel may seek input of an external expert in the organisation and administrative review of the CMC.</p>