Submission to the Inquiry established by Commissions of Inquiry Order (No. 1) 2022

Introduction

The Author

The author, Mark Le Grand LLB, LLM [Le Grand], was the inaugural Director of the Official Misconduct Division [OMD] of the Criminal Justice Commission [CJC] from 1990 to 1999, the precursor to the Crime and Corruption Commission [CCC]. The OMD was the investigative arm of the CJC. Le Grand was asked by the inaugural Chairman of the CJC, the recently deceased Sir Max Bingham QC, to come to Queensland to help him establish the CJC. Le Grand had been General Counsel to Sir Max in Melbourne when Sir Max headed the Victorian Office of the National Crime Authority [NCA]. At the time Le Grand was in charge of the South Australian office of the NCA. Prior to that Le Grand had been Deputy Director of the Commonwealth DPP, assisted both the national Williams Royal Commission into Drugs and the national Stewart Royal Commission into Drug Trafficking, assisted Special Prosecutor Redlich QC in compiling briefs of evidence and prosecuting matters arising from both the Stewart Royal Commission and the Costigan Royal Commission, and was instrumental in establishing and controlling several Joint Organised Crime Task Forces. Prior to Le Grand's retirement in 2017, he practised at the Queensland Bar for 10 years in criminal law and inquiry law.

The Terms of Reference

a. **<u>The structure of the Crime and Corruption Commission (CCC) in relation to use of seconded police officers</u>**

Background

In establishing the CJC, the recommendations of the report of the Fitzgerald Inquiry were punctiliously followed. On the issue of the composition of the OMD, the Fitzgerald Report had recommended:

"The Division will be responsible for independent investigations of any suspected official misconduct…….

The Official Misconduct Division will be served by police seconded to it for appropriate finite periods and on guidelines to be established by the Criminal Justice Committee. Police serving with the Official Misconduct Division will be relieved of any obligation to obey, provide information to or account to any other police officer save police posted to the Official Misconduct Division. All secondments to serve in the Official Misconduct Division should be for a relatively short time of two to three years, and non-renewable save when necessary to complete particular investigations where continuity is essential." [page 311]

The CJC experience

The CJC complied with the recommendation for two-to-three-year secondments of police officers, although there were occasions when the more senior police were retained for longer periods to maintain continuity and train incoming secondees in the processes and methods of the CJC [which were substantially different from the police service experience of the secondees]. In their day-to-day duties most police officers are unfamiliar with working in collaboration with lawyers, accountants, intelligence analysts and other members of multi-disciplinary teams, nor with the integration of the compulsory hearing process into the investigative matrix.

The Police Code

Clearly, there are risks inherent in relying upon police officers to undertake investigations of other police officers. These risks were identified in section 7.3 of the Fitzgerald Report under the heading "The Police Code":

"The unwritten police code is an integral element of police culture and has been a critical factor in the deterioration of the Police Force. It has allowed two main types of misconduct to flourish…….

- *Under the code it is **impermissible to criticize other police**. Such criticism is viewed as particularly reprehensible if it is made to outsiders.* [emphasis added] [page 202]

……

- *The police code also requires that police **not enforce the law against other police**, nor co-operate in any attempt to do so, and perhaps even obstruct any such attempt."* [emphasis added] [page 203]

The CJC sought to reduce these risks in several ways:

- It had the advantage, as did the Fitzgerald Inquiry before it, of being able to enlist the assistance of a police officer of the highest integrity, [redacted], initially Superintendent and later to become the Commissioner of Police, who had led the police group during the Fitzgerald Inquiry;

- It also recruited a leavening of civilian investigators, permanent CJC personnel, who were sprinkled throughout the multi-disciplinary investigative teams, and whose singular loyalty was to the CJC; and

- The investigations were not under the control of seconded police, but were supervised and regularly reviewed by the team leaders who were lawyers, most of whom [at least initially] had served on the Fitzgerald Inquiry.

The submission to the Parliamentary Committee from the former Logan City Councillors recommended the CC Act *'be amended to ensure that no serving police officers are engaged by, or seconded to, the CCC in any capacity as with ICAC in New South Wales'.*

The initial response to this submission is to note that the ICAC is not responsible for the investigation of police misconduct in NSW, nor is it responsible for the investigation of major crime.

Further, due consideration of the investigative role assigned to the CCC will demonstrate that the CCC could not operate effectively without access to seconded police officers. The need for successful investigations outweighs the risks the police culture imposes.

Advantages of seconded police

Some of the advantages attendant upon the use of seconded police are:

- Access to police information. Much of what police know or observe is never committed to paper and access can only be gained through an appropriate level of officer-to-officer rapport. That access cannot be replicated merely through statutory requirements to provide information or access to police computer systems. It requires a shared sense of comity and fraternity.

- Access to police resources. On numerous occasions during the course of NCA, CJC, Royal Commission and task force investigations, I have experienced the need to obtain additional resources in the field and/or assistance from specialists, often at a moment's notice as an investigation unfolds – to secure a crime scene, to complete an effective search, to surveil a suspect, to undertake parallel inquiries beyond available resources, or to provide security when things unexpectedly took a perilous path. A cohort of civilian investigators, unplugged from the police service, cannot provide this sort of support, especially at short notice.

- Access to the community. Police are part of their local communities. They see things daily through a law enforcement lens, they know who will co-operate, who to approach for information, and when alerted, can vastly increase the capture of information in real time, far beyond the capacities of a hand full of inhouse investigators.

- The security of operations. The investigation of persons suspected of serious corruption or major crime can entail substantial risks to the safety or security of the investigators. Relying upon civilian investigators in the field who are not invested with police powers to restrain and/or arrest for assault, can be problematic. If a confrontation occurs, experience demonstrates that persons with police identification and training are more likely to control the situation, and be able to obtain the necessary assistance [back-up] in the shortest time.

- The need to avoid the danger of overlapping or conflicting operations. Many investigations have been compromised at the intersection of state and federal law enforcement by a failure to communicate between agencies resulting in overlapping or conflicting operations, and even within jurisdictions, between specialist squads and local police. This conflict becomes a far greater danger when the agencies are totally divorced one from the other. Suspicion abounds and defensive responses rule.

I note the acknowledgement in the Fitzgerald Report of the vital need for access to police officers and material at page 20:

*"The Commission not only **needed police officers to investigate police**, amongst others, but it also needed **access to Police Department material**…. As the Commission's activities expanded, so to did the need for liaison with the Police Force in order to avoid the inefficiency and possible danger of overlapping or conflicting operations."* [emphasis added]

b. Legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations

On the issue of the prosecution of matters investigated by the OMD, the Fitzgerald Report was adamant that the OMD would not prosecute and that all matters would be referred to the DPP:

"The Division will be responsible for independent investigations of any suspected official misconduct…….

*Reports made by the Division as a result of complaints referred to it or as a result of matters initiated by it, can be directed to: **The Director of Prosecutions for consideration of prosecution**; and/or the Misconduct Tribunal to determine whether official misconduct has occurred which should be dealt with administratively apart from any prosecution; and/or the chief executives of various Government departments, agencies or statutory bodies, including the Police Commissioner if disciplinary action is thought necessary."* [emphasis added] [page 311]

*"**The Official Misconduct Division will not prosecute**. It will be obliged, when investigations reveal the need for prosecution, to **provide all materials** pertinent to the investigation, including those potentially damaging to any prosecution case, **to the Director of Prosecutions**. The fundamental right of defendants to know of and have available to them all evidence potentially of assistance in their defence must be preserved."* [emphasis added] [page 314]

Fundamental requirement that prosecution be separated from investigation

It is clear from the Fitzgerald Report, that it was to be a fundamental requirement governing the operations of the proposed CJC that the prosecution of offences arising from CJC investigations were to be undertaken at arm's length from the CJC, including the initiation of any such prosecutions by the laying of charges. In my respectful submission, it is clear from the report of the Parliamentary Committee that if this process had been adhered to by the CCC in the case of the former Logan City councillors (and otherwise), the establishment of this inquiry would not have been called for [see below].

The prosecution process envisages a two-stage test that must be satisfied before a prosecution is commenced:

- there must be **sufficient evidence** to prosecute the case; and
- it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the **public interest**.

In determining whether there is sufficient evidence to prosecute a case the DPP must be satisfied that there is *prima facie* evidence of the elements of the offence and a reasonable prospect of obtaining a conviction. The existence of a *prima facie* case of itself is not sufficient.

An arrangement whereby the prosecutor becomes involved in the hunt for proof of criminal activity contravenes the now entrenched principle of our legal system, that the prosecutor should remain separate from the investigation. The prosecutor's role in impartially reviewing such evidence as is put before him/her is an important protection to the citizen and one that would be substantially eroded if, through the energy, dynamics and partiality of the investigation, the prosecutor developed a vested interest in having charges laid and a conviction obtained. I refer to the **'partiality'** of the investigation, because at some stage in the investigation, the investigator determines who is suspect and sets about compiling a brief of admissible evidence to support a prosecution of that person.

The Director's Guidelines

To summarise the [DPP] Directors Guidelines - in making the decision to prosecute, prosecutors must evaluate how strong the case is likely to be when presented in court. They must take into account matters such as the availability, competence and credibility of witnesses, their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

The possibility that any evidence might be excluded by a court should be taken into account and, if that evidence is crucial to the case, this may substantially affect the decision whether or not to institute or proceed with a prosecution. Prosecutors need to look beneath the surface of the evidence in a matter, particularly in borderline cases.

Having been satisfied that there is sufficient evidence to justify the initiation or continuation of a prosecution, the prosecutor must then consider whether the public interest requires a prosecution to be pursued. In determining whether this is the case, prosecutors will consider all of the provable facts and all of the surrounding circumstances. The public interest factors to be considered will vary from case to case, but may include:

- whether the offence is serious or trivial;
- any mitigating or aggravating circumstances;
- the youth, age, intelligence, physical health, mental health or special vulnerability of the alleged offender, witness or victim;
- the alleged offender's antecedents and background;
- the passage of time since the alleged offence;
- the availability and efficacy of any alternatives to prosecution;
- the prevalence of the alleged offence and the need for general and personal deterrence;
- the attitude of the victim;
- the need to give effect to regulatory or punitive imperatives; and
- the likely outcome in the event of a finding of guilt.

These are not the only factors, and other relevant factors are contained in the Director's Guidelines.

Generally, the more serious the alleged offence is, the more likely it will be that the public interest will require that a prosecution be pursued.

The downfalls of the investigator instituting a prosecution

I have set out in some detail above the factors a prosecutor is required to take into account in determining whether a prosecution should be undertaken. I have done so advisedly as I submit that going through those factors, the fallacy that the investigator is properly placed to make the decision about prosecution becomes increasingly obvious. As one steps back it becomes apparent that involvement in the investigation, especially in a lengthy and complex investigation, taints the whole review process. For example:

- Assessing the credibility of witnesses. An investigator's personal interaction with witnesses over time may lead to indelible subjective opinions which overlook weaknesses in their testimony, but which will be obvious to a jury.

- The expenditure of time and resources. Many CCC investigations are complex, resource intensive and time consuming. Having invested so much in a case, and

faced with justifying that commitment to the Parliamentary Committee and to the public, there is a strong if subtle pressure to validate the investigation by proceeding to prosecution. This pressure affects the in-house lawyers reviewing the case, both through their relationship with the investigators and through supporting the work of their employer, the CCC.

- The issue of compelled testimony. Many cases investigated by the CCC itself involve the compulsory examination of witnesses. Where a prosecution is commenced against a witness who was earlier compelled to provide evidence and the prosecution relates to the same subject matter about which the compelled evidence was obtained, the Courts have ruled that the prosecution cannot proceed where there is to be any reliance on the compulsorily obtained evidence [**see discussion below**]. The analysis of what evidence is admissible in these circumstances needs a rigorous examination at arm's length from the investigation and is not appropriate to an in-house assessment.

These are matters best assessed by an independent and expert prosecuting agency such as the DPP.

The CCC is an investigative agency

The CCC is an investigative agency. Neither the Commission nor its officers have the power to prosecute or to initiate a prosecution by the laying of a charge. However, Queensland police officers who are seconded to the CCC do retain their powers as police officers to charge.

As the Parliamentary Committee's report reveals, under the CCC process, material is provided to the CCC Chairperson to approve a recommendation to charge. In the instance of the Logan City councillors, the CCC submitted that the charges were laid independently by seconded QPS officer [redacted] (the case officer for the investigation into the councillors), after a recommendation that charges be considered was approved by the CCC Chairperson. The charges were laid on 26 April 2019. From that time, the charges were handled by the DPP as the prosecuting agency. [see Parliamentary Committee Report page 98]

With due respect, it is unrealistic to suggest that in the circumstances of this case there was any independent element in the laying of these charges [redacted] was the investigating case officer who had previously recommended that charges be laid. The reality is that the charges were effectively approved by and laid under the auspices of the CCC.

From the report of the Parliamentary Committee in the case of the former Logan City councillors it is quite clear that elements which an independent assessment by the DPP would have considered pursuant to the Director's Guidelines [Queensland] were missing from the process or given insufficient weight before charges were laid.

In particular, I would refer to the following:

- The main analysis of the admissible evidence to determine if there was sufficient *prima facie* evidence of the elements of the offence and a reasonable prospect of conviction appears to have been incomplete at the time charges were laid. Counsel Assisting the Parliamentary Committee summarised the deficiencies they identified in the content of the memoranda this way:

  None of the memoranda [redacted] *prepared for the purposes of commencing criminal proceedings against the 7 Councillors that were considered by Mr MacSporran on 24 April 2019 contained any elemental analysis of the proposed charges. They did not consider in any detail the evidence that might be relied upon against each individual accused or its admissibility. The 'varying culpability' of the different potential defendants was not given any attention. The memoranda did not properly address the public interest considerations, including factors that might weigh against charging each individual accused and the consequences of charging such a number of them that the elected government of Logan City would be dissolved.* [see Parliamentary Committee Report page 101/102]

  The validity of these observations was accepted by the CCC. These deficiencies canvass many of the issues a prosecutor is required to consider under the Director's Guidelines summarised above. It demonstrates the dangers of the investigator determining whether charges should be laid. Counsel Assisting noted that none of the principal documents prepared for the purposes of considering whether to prosecute the Mayor or Logan City Councillors made any mention of the Director's Guidelines. [see Parliamentary Committee Report page 107]

- There is a question whether the decision to prosecute was suitably impartial, namely, was it influenced by the personal feelings of the investigators concerning the offenders and/or the desire to protect a whistle-blower? The Parliamentary Committee reviewed this issue and expressed concern at the CCC's apparent reluctance to consider evidence reflecting alternative motivation and factors impacting upon the offence of fraud. [see Parliamentary Committee Report page 103]

c. <u>Section 49 of the Crime and Corruption Act 2001.</u>

Section 49 provides:

49 Reports about complaints dealt with by the commission

(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or

information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.

(2) The commission may report on the investigation to any of the following as appropriate—

(a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;

……..

(5) In this section—

prosecuting authority does not include the director of public prosecutions **[**emphasis added**]**

The 2018 amendment

I note that in 2018, section 49 was amended to include section 49(5) in the CC Act which provides that a prosecuting authority for that section does **not** include the DPP. In my submission, from a public policy perspective, this provision is wrong. For the reasons articulated above, in dealing with the **second term of reference (b)**, this arrangement can result in the contravention of the now entrenched principle of our legal system, that the prosecutor be separate from the investigation.

Charging itself can do irreparably harm

The decision to initiate a prosecution by the laying of charges, of itself, can do irreparably harm to the reputations and interests of the persons charged. It is, with respect, not to the point [as was articulated in submissions to the Parliamentary Committee on behalf of the CCC] that the DPP could terminate the prosecution when the brief of evidence was reviewed by its officers after charges were laid per medium of a police officer seconded to the CCC. By the time the DPP has assessed the evidence many months or even years later, and determined to direct that those charges should be withdrawn, or after committal, file a nolle prosequi, much damage has already been done. The submission to the Parliamentary Committee from the former Logan City Councillors noted that the effect on a person in their position merely being charged with an integrity offence [see section 153(6) of the Local Government Act 2009] is that they are immediately suspended from office, destroying their livelihood, the representation of their constituents' interests, and prejudicing the democratic process.

The CJC position should be restored

Prior to the 2018 amendments, the CCC was authorised, but not required, to report on a misconduct investigation ('corruption' complaint) to the DPP, or other appropriate prosecuting authority, '*for the purposes of any prosecution proceedings the director or other authority considers warranted*'. This of itself was a watering down of the arrangement which had originally operated in the CJC in conformity with the Fitzgerald Inquiry

recommendations. Section 33(2A) of the Criminal Justice Act 1989 provided that with the authority of the Commission, the report of an investigation of the OMD **must be made** to the Director of Public Prosecutions or other prosecuting authority with a view to such prosecution proceedings as **the Director considered warranted**. In my submission, for the reasons articulated above, the position which obtained under section 33(2A) of the Criminal Justice Act 1989 should be restored.

Time delays and budgetary and resourcing issues

I further note that, according to the report of the Parliamentary Committee, during its 4 yearly review of the CCC in 2016, the DPP raised concerns about the practical application of the operation of section 49 of the CC Act, that is, the ability of the CCC to refer briefs to the DPP. The DPP submitted that the process gave rise to time delays and budgetary issues, as well as practical resourcing issues, particularly in regard to reviewing compelled evidence. It was said that, as the policy of the DPP is that it is only senior prosecutors who assess these matters, any time taken in that assessment is significant and draws the prosecutors away from court-based advocacy and other aspects of their duties.

I would respectfully submit that this rationale for changing what had up until 2018 been a successful and largely fail-safe arrangement which had hitherto persisted for almost 30 years, was a mistake. The appropriate solution was to provide more resources to the DPP, not to cut the DPP out of the loop and deny the whole rationale for the DPP's involvement in the process as recommended by the Fitzgerald Inquiry [page 314]. In the instant case of the prosecution of the Logan City councillors, the impost on the resources of the DPP pales into relative insignificance when compared with the resources wasted by the failed prosecutions, the damage done to the reputations of the former councillors and to the CCC, the loss of public trust in the process, and the expense not only of the Parliamentary Committee's inquiry but the present follow-on inquiry.

How significant is the actual impost on the DPP?

The other difficulty with the resource argument is that, on the statistics presented to the Parliamentary Committee by the CCC, the impost on the DPP by the CCC was occasional at best. For example, in the 2014/15 financial year the DPP received only two briefs from the CCC, while there were eleven the previous financial year.

Contrast this rate of referral of matters to the DPP, to the rate achieved by the CJC before Connolly/Ryan Inquiry at a time when referral of all matters to the DPP was mandated by the CJ Act – **see Appendix A.**

Prior to the disruption caused by the Connolly/Ryan Inquiry into the CJC [October 1996 to August 1997 – 10 months] which was ultimately shut down by the Supreme Court for apprehended bias, the CJC was successful on all available metrics in discharging the reform and law enforcement role envisaged by Fitzgerald. The Connolly/Ryan Inquiry was a response to the CJC's investigation of the Borbidge Government's involvement in a deal with

the Police Union concerning the Mundingburra re-election. The extent of that disruption was later documented in a report by the CJC which can be found on the CCC's website [Impact of the Connolly/Ryan Inquiry on CJC – 19 September 1997]. Because of the demands made upon the CJC, it was substantially incapacitated as a fully functioning entity for almost a year. As the attached reports which I compiled at the time demonstrate, the CJC was well on its way to achieving the goals set for it by the Fitzgerald inquiry [see **Appendices A & B].**

Appendix A

If I may be permitted to draw your attention to the two tables labelled **Appendix A**, totalling the Charges and Penalty Outcomes achieved from the foundation of the CJC to 8 December 1997. This rate of investigation and prosecution by the CJC was exponentially higher than that achieved subsequently by the Crime and Misconduct Commission [CMC] and the CCC [as set forth in their annual reports]. The amendments contained in the Crime and Misconduct Act 2001 effectively compromised pro-active corruption investigation by the CMC and its successor the CCC by mandating that henceforth the CMC concentrate on "capacity building" and return complaints for investigation to the unit of public administration making the report [see below]. The point within the terms of reference I am making here is that despite this exponentially higher rate of referral of briefs of evidence to the DPP, there was no substantial resourcing issue which the DPP raised at that time. The strict arrangement under section 33(2A) of the CJ Act whereby "the [OMD] report **must be made** … to the [DPP]" was a viable, effective and timely process.

Compelled testimony

The further argument by the DPP as set forth in the report of the Parliamentary Committee concerns the effect of the decisions of the High Court in ***X7 v Australian Crime Commission*** (2013) 248 CLR 93, ***Lee v New South Wales Crime Commission*** (2013) 248 CLR 196 and ***Lee v The Queen*** (2014) 88 ALJR 656, applying to investigations during which a defendant (whether charged at the time or later) is required to answer questions or otherwise provide evidence in the investigation. The DPP said that the upshot of those decisions from a practical perspective was, that where a prosecution is commenced against a witness who was earlier compelled to provide evidence and the prosecution relates to the same subject matter about which the compelled evidence was obtained, the prosecution cannot proceed where there is to be any reliance on the compulsorily obtained evidence. The DPP submitted that the consequence which is likely to flow is that the prosecution of any such person will not be permitted to proceed where any witness and/or any member of the prosecution team has been exposed to the compulsorily obtained evidence, even though that evidence is not to be relied upon in the prosecution.

This situation is said to militate against the involvement of the DPP in any review of such CCC briefs which contain compelled testimony. With due respect, I submit that this is a straw man argument as the solution is simple. The prosecutor who reviews the brief, does so in isolation from any subsequent prosecution of the brief. Yes, there may be some double

handling, but I submit that this is a far preferable situation to the enormous waste of resources, loss of public trust, unfairness to defendants and public opprobrium caused when faulty inhouse prosecution decisions are made. Unfortunately, failed prosecutions initiated by investigators without independent review can lead to the unwarranted imputation of animus against those making the decision to prosecute.

The charging powers of seconded police officers

The CC Act provides for police officers seconded to the CCC to have the functions and powers of a police officer (including the power to charge persons for relevant offences) – see Section 255 CC Act. While the CCC does not have discretion to prosecute, it does have the discretion:

• to gather evidence and refer a matter to an entity who does have discretion to prosecute; and

• to request a seconded police officer to exercise his/her discretion to charge a person before referring a matter to an entity which has the discretion to prosecute.

Thus, although the CCC conducts the investigation, any charges are laid by a sworn police officer seconded to the CCC who ultimately must also be satisfied the charges are appropriate. In exercising the discretion to charge and preparing material in support of that decision, sworn police officers are obliged to comply with the Director's Guidelines.

In evidence to the Parliamentary Committee, CCC Chairman MacSporran QC responded when asked about the charging powers of seconded police officers:

It is just a quirk of fate that we have police officers from the QPS seconded to us. When they are seconded to us, they retain their normal police powers, which include powers of arrest and charge and so forth. What we do, just for convenience, is once we decide, through our chain of command, including up to me, that there is sufficient evidence to charge someone, we then give that material to an independent police officer at the commission and say, 'Would you mind looking at this and exercising your discretion as to whether you think it is one you would be happy to charge or not?' That is how the charge is laid if we lay it. When I say 'we', it is really the police officer. It is then handed over to the DPP.

With great respect [redacted], is it real to believe that a seconded police officer in these circumstances who participates in the investigation and makes a recommendation to charge which finds its way to the Chairman really exercises an independent discretion? In particular, in complex matters which have been submitted to, and approbated by, the Chairman and the CCC's "*highly experienced lawyers*"?

Should Police Officers seconded to the CCC retain the power to charge?

Counsel Assisting the Parliamentary Committee suggested that the Parliamentary Committee consider a requirement that the CCC obtain the recommendation of the DPP, or

a senior independent legal advisor, before exercising (through seconded police officers) the discretion to charge **serious criminal offences in the exercise of its corruption function**. [emphasis added]. It was suggested that this measure … "*will help to improve the charging process, because the CCC would have to demonstrate to an independent senior person that there has been a proper and rigorous approach to charge selection, sufficiency of evidence and consideration of public interest criteria. Requiring the involvement of an independent check of this kind will also help ensure the impartial character of the ultimate decision."*

Although I am in agreement with the sentiment of this submission, I submit that a blanket prohibition on charging with the concurrence of an independent agency as suggested here would go too far for the following practical reasons.

Regardless of the structure of the CC Act, there is no necessary dichotomy between corruption and major crime. Corruption is often associated with major crime, that is, an expense of doing business. For example, corrupt payments to police or to other officials to facilitate the trafficking of illicit drugs.

As noted above under **term of reference (a)**, the investigation of persons suspected of serious corruption can entail substantial risks to the safety and security of the investigators. Search and seizure and arrest situations may lead to confrontations with suspects, the destruction of evidence, or the risk of flight. Assault of, and/or injury to, police officers, CCC officers and the destruction of evidence are serious offences. It would be counter-productive and even dangerous to tie the hands of police officers undertaking operations in the field in these circumstances. To prohibit persons being charged pending a referral to, and approval by, an independent prosecution agency in such circumstances, would be impractical, self-defeating and possibly dangerous.

With respect, the practical line which could be drawn is between referral of the major brief before charging, but leaving a discretion in seconded police in the field to protect themselves and those assisting them, to secure evidence against destruction, and to prevent the flight of suspects by the laying charges if reasonably necessary.

The Elephant in the room

In inviting submissions, the Commission of Inquiry has made the following statement:

"The Commission of Inquiry is required to make recommendations concerning changes to the Crime and Corruption Act and the structure, organisation, operations, practices and procedures of the CCC which are necessary to ensure that, in respect of the matters stated above, the CCC acts in a way that is ***independent, efficient, effective, objective, fair, impartial*** *and meets the public interest and the highest standards of integrity and impartiality and protects and promotes human rights including the rights protected under the Human Rights Act 2019."* [emphasis added]

The Fitzgerald Report recommended [Recommendation 10] that the OMD conduct **independent investigations** into any suspected official misconduct. Fitzgerald recommended that only "**trivial or purely disciplinary matters** should be referred to Chief Executives of Departments or the Commissioner of Police to investigate and take appropriate action". Fitzgerald also recommended that **reports of OMD investigations** should be **referred to the Director of Prosecutions** for consideration of prosecution. [emphasis added]

Each of these recommendations was enacted into law by the CJ Act.

In my respectful submission, the only effective way to understand the present situation which the commission is required to examine, necessitates an examination of the situation which has evolved from the establishment of the CJC. On the recommendations of the Fitzgerald Report, the CJC had seconded police as part of the mix, the CJC investigated all allegations of official misconduct except trivial or purely disciplinary matters, and prosecutions were undertaken only when the DPP considered them warranted. Since the CJC, the corruption function of the CCC has mutated to a situation today which I submit is not effective in discharging the role and functions envisaged by the views and recommendations of the Fitzgerald Report, a mutation which has led to this Inquiry.

Crime and Corruption Act 2001

The legislative amendments introduced by the Crime and Corruption Act 2001 effectively reversed much of the Fitzgerald vision in tackling official corruption and misconduct by officials in Queensland. These amendments were introduced and passed without any public inquiry, consultation or consideration. To the extent that there was any consultation with stakeholders, it was done behind closed doors. On any unbiased review, the CJC had been successful in discharging its remit under the model proposed in the Fitzgerald Report and the views and recommendations of the Hon. Tony Fitzgerald QC. Thereafter, the OMD was hamstrung in pro-actively investigating official corruption and official misconduct.

Appendix B

I attach at **Appendix B**, a paper I compiled towards the end of my 10 years at the CJC providing some measures of the impact of the OMD on the extent of corruption in Queensland. I refer briefly to the main factual findings and/or recommendations of the Fitzgerald Report relevant to the functions of the OMD and juxtapose the [then] current situation as measured by the information available to me.

CJC's primacy in corruption busting reversed

The CJC's primacy in independently investigating all substantial official misconduct was reversed. Henceforth the principle at play was to be one of "devolution" - under section 34 *"action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit*". By Section 35*, "complaints about misconduct within a*

unit of public administration to a relevant public official to be dealt with by the public official".

The CMC's role was to be largely supervisory, although it did have the reserve power to conduct the investigation itself if it could justify doing so.

Thus, the counter-productive nonsense of the police and public sector investing complaints against themselves [a clear conflict of interest and open to abuse] was to be enshrined in Queensland law. As noted, there was no predicate public inquiry preceding this fundamental change to the Fitzgerald process to justify why such a wholesale abandonment of the Fitzgerald principles was warranted.

In my submission, the re-structuring of the CJC brought about by the Crime and Misconduct Act 2001, greatly prejudiced its effectiveness. I respectfully invite you to look at the relatively scant results achieved after this change compared to those which proceeded it – see **Appendix A**.

Under the Fitzgerald model incorporated in the Criminal Justice Act 1989, the CJC was responsible for the direct investigation of allegations of official misconduct, that is, as a specialist anti-corruption agency with unique powers and resources tailored to accomplishing this task.

Government Departments don't have specialist resources

Government Departments don't have experienced corruption investigators, lawyers familiar with compiling briefs for prosecution, compulsory hearings, surveillance facilities, electronic interception, forensic accountants, notices to produce, the ability to run informants, search warrants, etc.

Sure, they can seek help from the corruption prevention programs of the CCC, but that's a far cry from the heft provided to investigations by an expert specialist agency with the skilled resources already in place.

Corruption is a clandestine activity

The whole notion that inexperienced public service officers, without specialist resources and training, can investigate serious official corruption denies reality. Corruption is a clandestine activity that both the corruptor and the corrupted go to great lengths to keep secret. The very nature of corrupt activity aggravates the difficulty of detection and investigation. That inexperienced personnel can effectively investigate it is a total nonsense. Most corruption is done for enrichment – it requires a contemporaneous following of the money trail before the trail goes cold or is destroyed, and the chance to seized the proceeds of the crime lost.

A pro-active approach to investigation

Effective investigation of serious corruption requires a pro-active approach. In most cases, the prejudice caused to serious corruption investigations by inexpert initial investigations, or

the delay in utilizing specialist resources cannot be later rectified. By the time the supervising agency has taken over a flawed departmental investigation, the crooks are on notice, evidence has been destroyed, alibis invented, the opportunity for the electronic interception of incriminating conversations lost, surveillance ineffective, and explanations concocted.

Compulsory hearings of suspect persons are largely unproductive unless incriminating material has already been obtained upon which to question the witness and force truthful answers, or turn accomplices against the principals. This was the experience of the original Fitzgerald Inquiry, as it was of the CJC.

The approach of government bodies generally – "The Territorial Imperative"

Government departments and agencies have a variety of responsibilities. The primary task of those bodies is not the investigation of crime but the administration of their designated responsibilities as set out in the legislation for which they are responsible. All else is given a much lower, if any, priority. This approach results in an inadequate consideration of law enforcement needs. It manifests itself in a narrow construction of the agency's responsibilities, an inordinate desire for secrecy, and an abiding compulsion to shield one's own territory from inspection by others, particularly outside bodies who could embarrass the Department, its Minister or its senior staff. This is axiomatic and is known as "the territorial imperative".

Compromising staff

For example, if an investigator in say Queensland Health [Department] detects an offence against the Food Act 2006, she tends to keep it to herself. In that case she argues that her responsibility is solely the administration of the Food Act with no other responsibility, and, in any case, she says that she is precluded by the secrecy provisions from drawing the attention of other agencies to the breach, even where she is aware that some element of official misconduct may have attended the breach. This response is reinforced where she is aware that if she reported it, it will be returned to her department by the CCC for investigation, much to her embarrassment both with her superiors and her work mates.

The other dimension, is that those charged with investigating the matter within the department or agency have little incentive to vigorously pursue the matter. Vigorous pursuit will often prejudice their relationships with other employees, sometimes permanently. If they are successful in substantiating the complaint, the Department and its senior officers stand to be embarrassed, and if charges are laid, that embarrassment may continue for months if not years. However, if they are unsuccessful, the matter goes away. A substantial disincentive to effective investigation.

Systemic rorting

Referring individual matters back to the originating department or agency cuts across the detection of systemic rorting. A scheme to defraud one government entity may well be common to many others. Investigations and the institution of appropriate proceedings must all be co-ordinated. Only in this way can it be ensured that available resources are best utilized and that the various investigations are undertaken in a complimentary and holistic manner.

The vital need for co-ordination

A theme often repeated in various reports is that there is no co-ordinated response to the challenge offered to law enforcement by organized corruption. Breaking the response down to individual complaints investigated in an ad hoc way by individual departments and agencies is virtually designed to miss the big picture. The scenario is, on the one hand, of criminals who have adopted state or Australia wide strategies in planning and implementing particular schemes, and, on the other, of Government instrumentalities each separately trying to come to grips with what they see as a single complaint impacting their particular area of enforcement responsibility. Regrettably, the lack of a common and co-ordinated approach by the multiplicity of responsible instrumentalities simply compounds the problem and represents a failure of the anti-corruption process.

I am aware of an interesting review of the role of Government Departments found in a public sector association's submission to a national crime seminar. They observed, inter alia, that Departments are designed generally to handle genuine and honest transactions and are ill equipped and structured to detect and pursue criminal activities. On each occasion when Departmental procedures were externally audited, they were found to have substantially failed in their charter of community protection. At the same time where non-criminal activities were involved in the situation where the vast majority of people routinely obeyed the legislative requirements, the Departmental response was found to be adequate.

In my respectful submission, the anti-corruption processes of the CMC/CCC have fallen well short of the processes and results envisaged in the Fitzgerald Report, a situation which stems directly from the amendments to the official misconduct process contained within the Crime and Corruption Act 2001. Evidence for that proposition can be drawn from:

- The quantum and substance of the results achieved by the CJC before the amendments, and those recorded by the CMC and CCC in a similar timeframe thereafter; and
- The apparent state of public administration in Queensland today.

A pro-active, specialised and expert investigative strategy

In short, the need to commit large resources to investigate and rectify what has happened in the past is a poor substitute for adequately and reasonably resourcing a pro-active,

specialised and expert investigative strategy designed to seek out, identify and prosecute those who are intent on compromising the good name and reputation of the Queensland Public Sector, and which will act as a powerful ongoing deterrent to the continued development of insidious corruption. The two processes of complaint and pro-active investigation are complimentary and integral to the realisation of the views, aims and recommendations of the Hon. Tony Fitzgerald as expressed in the Fitzgerald Report which was accepted “lock, stock and barrel” by Government.

Mark Le Grand

27th March 2022

APPENDIX A

PEOPLE CHARGED FOLLOWING CJC INVESTIGATIONS

8 December 1997

• Police Service	1,213
• Public Servants	411
• Others	408
• TOTAL CHARGES	2,032

PENALTY OUTCOMES

8 December 1997

	PUBLIC SECTOR	POLICE
DISMISSAL	121	200
DEMOTION/PAY REDUCTION	38	175
REPRIMAND/CHASTISED	80	291
COUNSELLED/GUIDANCE	52	553
FINED	84	232
PAY DEFERMENT	3	5
RESIGNED	37	40
CAUTION	18	89
TRANSFERRED	11	4

APPENDIX B

THE IMPACT OF THE OMD ON CORRUPTION IN QUEENSLAND

I have been asked to provide some measures of the impact of the OMD on the extent of corruption in Queensland. In responding, I wish briefly to refer to the main factual findings and/or recommendations of the Fitzgerald Report relevant to the functions of the OMD and juxtapose the current situation as measured by the information available to me.

FITZGERALD FINDINGS CONCERNING MISCONDUCT BY POLICE

The Police Code (pp. 202-205)

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

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

  Complaints by police have increased from the negligible numbers reported upon by Fitzgerald prior to the establishment of the CJC to stand currently at 15.6 per cent (in the first six months of 1997/98) of all complaints of misconduct against police. The following table illustrates the extent of the shift from the Fitzgerald finding that 'it is impermissible to criticise other police' to the current situation.

Police Complainants as a Percentage of Total Complaints Against Police as Reported to the CJC

	Complaints from Commissioner	Complaints from other Police	Total Complaints from Police
90/91	4.0	3.5	7.5
91/92	1.5	6.1	7.6
92/93	1.2	12.1	13.2
93/94	0.4	14.2	14.6
94/95	0.6	14.6	15.2
95/96	0.4	14.0	14.4
96/97	0.1	13.2	13.3
97/98*	0.1	15.6	15.7

* Six months figures

I submit that this is indicative of a change in the attitudes of many police. There is an increasing acceptance among police of the CJC's role. However, I do not want to exaggerate the change. There are still far too many instances of police failing to assist in or actually obstructing CJC investigations, for example, by claiming not to have seen conduct which occurred in their immediate presence.

Police 'Verballing' (p. 206)

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

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

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

Lest it be said that this has simply resulted from the advent of mandatory tape-recording of confessional statements and admissions, I would point out that the

requirement to tape-record evidence only relates to indictable offences and not to summary hearings in Magistrates Courts, which represents approximately 90% of all criminal prosecutions.

Given that the CJC receives thousands of complaints annually from every region of the State, and given that it has achieved reasonable success in investigating allegations of police misconduct, I would submit that it cannot be credibly asserted that persons are being convicted upon fabricated evidence without complaint to the CJC.

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

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

Probably nowhere in the Fitzgerald Report were the Commissioner's comments more scathing than in his report upon the failure of the Police Internal Investigations Section.

Fitzgerald's review of the Police Complaints Tribunal (pp. 289-293) was only slightly less acerbic. He reported that the number of complaints lodged with the Police Department fell from 750 in 1980/81 to about 475 in 1985/86. He recommended that both bodies be abolished.

The CJC was inundated with complaints upon the establishment of the Complaints Section on 22 April 1990.

In the first three years of its operation complaints received by the CJC increased by an average of 30 per cent per year. Although they have now reached a plateau of approximately 3,000 per year or three times the rate of complaint as at the establishment of the CJC, almost two-thirds or 64% are made by members of the public. History has repeatedly demonstrated that persons do not complain to organisations they do not trust or which they do not regard as credible. The former Police Complaints Tribunal is a case in point.

Further, the mere fact of investigation regardless of whether the complaint is ultimately substantiated, can provide a real deterrent to misconduct. For example, in the area of police assaults on citizens, the early days of the CJC saw frequent reports of police beatings of prisoners in police custody, watchhouses etc. This behaviour was given priority attention by the CJC and although only

a relatively small number of such complaints could be substantiated largely because of the refusal of police to give evidence against their fellow officers, the mere fact of early and vigorous investigation led to a decrease in this calculated type of abuse of power with few instances now being reported.

THE PCJC FINDINGS

In its Report of its last three yearly review of the activities of the CJC, the PCJC found in respect of the CJC's complaints function:

> ***Conclusion 14***
>
> *The Committee considers the overall achievements of the Complaints Section of the Official Misconduct Division to be substantial. The Committee believes that the Section is operating in an efficient manner and is achieving the objectives envisaged by Fitzgerald QC.*
>
> *The Committee considers it to be absolutely essential that the independent complaints process continue operating as currently constituted, as it appears to be working successfully.* (pg. 82)

RESULTS OF RESEARCH DIVISION SURVEY AND ANALYSIS

Public confidence in the Queensland Police Service

The Research Division's *Attitudes to QPS* surveys undertaken in 1991, 1993 and 1995, and a recent national Australian Bureau of Statistics survey data support the following conclusions:

- in the period preceding the Fitzgerald Inquiry, Queensland police generally had a less favourable public image than did police in the rest of Australia
- public perceptions of the QPS have become more favourable since 1991.

Public confidence in the complaints system

1995 *Attitudes to QPS Survey* conducted on behalf of the CJC by REARK Consulting - there was a high level of agreement with the general proposition that complaints against police should be investigated by an independent body, with most respondents also seeing the CJC as independent from the police. In addition,

61 per cent of respondents considered that the CJC had had success in improving police conduct.

Trends in total complaints received

Since the establishment of the CJC, there has been a large and sustained increase in recorded complaints against police. The report by the Research Division contrasts complaints recorded before and after the Fitzgerald Inquiry. The data show a fairly stable rate of complaints from June 1978 to June 1986 of about 170–180 allegations per 1,000 officers, an upward trend during the years of the Fitzgerald Inquiry, and then a dramatic increase in complaints upon the establishment of the CJC, levelling off at around 500 allegations per 1,000 officers in 1993–94.

Trends in specific complaint types

Analysis of complaints data undertaken by the Research Division indicates that since the establishment of the CJC, there has been a downward trend in the number of allegations per 1,000 officers relating to 'duty failure'. This provides support for the view expressed by many police that the Fitzgerald Inquiry reforms have led to a substantial improvement in the level of internal discipline within the Service.

Another area where there has been a significant improvement has been in relation to allegations of 'verballing' and the fabrication of evidence. According to the Fitzgerald Report:

> *Verballing or the fabrication of or tampering with evidence, arises out of frustration and contempt for the criminal justice system. It is common, and engaged in by many officers who are otherwise honest.* (1989, p. 363)

From consuming considerable investigative time in 1990, such complaints are now relatively rare. CJC research has also found evidence of a significant cultural change among police in terms of the perceived unacceptability of verballing. The introduction of mandatory tape-recording of confessions and admissions for indictable offences has contributed to this improvement, but the CJC is also of the view that its own activities have had a major deterrent and educative effect on police.

There has been a substantial rise since 1990–91 in allegations of assault and complaints relating to improper arrest, misuse of powers, and search-related matters. However, the CJC's research indicates that these increases have been largely due to an increase in the level of policing activity, rather than to any deterioration in standards of policing behaviour. In the case of assault allegations, the CJC's research shows that, while the total number of allegations has increased significantly, an increasing proportion of complaints have related to minor assaults where there was no evidence of any injury. This supports the view of experienced police expressed in the interviews discussed that there has been a decline in the incidence of serious, premeditated assaults since the CJC was established.

Trends in substantiation of complaints

The Fitzgerald Report (1989) was highly critical of the conduct of investigations by the Internal Investigations Section, which was described as:

> . . . *woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralized whatever prospect there might have been that allegations against police would have been properly investigated. The Section's effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.* (p. 289)

The Fitzgerald Report was equally critical of the Police Complaints Tribunal, noting that less than 6 per cent of complaints resulted in the laying of either criminal charges or charges under the Police Rules.

By contrast, the data show that the substantiation rate for matters investigated by the CJC (as opposed to matters received) has increased from 16.4 per cent in 1991–92 to 32.5 per cent in 1994–95, primarily due to better screening out of weak cases and concentration of investigations on the more significant matters. Despite the improvement in recent years, substantiation rates remain fairly low in absolute terms, but this is largely due to the inherent difficulties in meeting evidentiary requirements (particularly for assault allegations, which are one of the largest complaint categories) and to the fact that increased reporting rates and stricter recording procedures for complaints have 'drawn in' many complaints which are relatively weak in evidentiary terms. The tables at appendix A give some indication of the results of CJC investigations.

Since the establishment of the CJC, only 7 per cent of CJC recommendations concerning charges have not been pursued by the QPS, and in excess of 62 per cent of officers against whom the CJC has recommended charges have not only been charged but found guilty or resigned. This is in marked contrast to the QPS attitude to Police Complaints Tribunal recommendations, which had only a one in three success rate for implementation.

Police perceptions of police misconduct

A valuable measure of CJC success in investigating misconduct is police perceptions of the CJC's role and impact. To obtain some independent data in this area, in mid–1995 the CJC arranged for two Griffith University academics to interview a small sample of police officers who had joined the QPS before the Fitzgerald Inquiry. The interviews were conducted under conditions of strict anonymity. Findings include that there was a general perception among the police interviewed that the behaviour and conduct of police officers had improved as a result of the Fitzgerald Inquiry reforms. Specifically, it was broadly acknowledged that there was:

- greater compliance with rules and regulations governing police conduct and behaviour

- less misconduct, particularly drinking alcohol on duty and unlawful assaults on interviewees

- a greater propensity for police to report other officers for misconduct.

Police against police complaints

CJC complaints data show a substantial increase since 1990–91 in the proportion of complaints against police which have been initiated by other police. In 1996, the Research Division undertook a more detailed analysis of such complaints from 1991–92 and 1994–95. Key findings included:

- slightly more than one-third of police-against-police complaints were based on information provided by officers below the rank of sergeant

- the number of complaints from management increased substantially between July 1991 and June 1995, although there was no evidence of any

increase in the number of complaints initiated by officers below the rank of sergeant

- the largest category of police-initiated complaints related to suspected criminal acts or omissions (excluding allegations of assault).

These findings indicate a weakening of the 'code of silence' as described in the Fitzgerald Report, particularly among police with supervisory and managerial responsibilities. However, it is also evident from the research that there is continuing resistance among rank and file police to the idea that police have an obligation to report and assist in the investigation of suspected misconduct by fellow officers, particularly where the misconduct is not perceived as serious. CJC surveys of police about their attitudes towards the reporting of misconduct have produced similar findings. These findings on the resilience of police culture highlight the need to develop proactive strategies for promoting positive cultural change within the QPS — an increasingly important CJC priority (see below). This research also gives weight to the CJC's view that the QPS is not yet capable of 'self-regulating' in relation to discipline matters.

THE INCREASING SOPHISTICATION OF POLICE CORRUPTION

Prior to the establishment of the Fitzgerald Inquiry there had been various other inquiries held into the allegations involving members of the QPS, which had met with limited success, for example the National Hotel Inquiry, the Lucas Inquiry, the Williams Inquiry etc. The Fitzgerald Inquiry had two distinct advantages:

- a determined inquirer who recruited an effective staff, and

- the arrogance of a Police Service which was used to acting with impunity;

The Police Service had seen similar inquiries come and go without imposing significant change. A similar situation existed in New South Wales prior to the Inquiry head by Justice Wood.

The trauma of the Fitzgerald years and its aftermath was not lost on the corrupt. The lessons were learned and serious police corruption has become far more sophisticated.

Whereas before the Fitzgerald Inquiry the allegations of corrupt conduct by police were based on police involvement in the policing of prostitution and off-

course betting, it is now the drug trade which is perceived as a developing and even more lucrative source for official misconduct.

Thus in many ways the job of the CJC and its New South Wales counterpart, the Police Integrity Commission, is harder than the pre-cursor inquiries, the Fitzgerald and Wood Inquiries.

The CJC Inquiry headed by former Supreme Court Judge Bill Carter QC from September 1996 to October 1997, Operation Shield, recognised that the investigation of police corruption and misconduct is extraordinary difficult work and is extremely resource intensive. Judge Carter found that the factors responsible for this include:

- Targeted police have access to and misuse for their own corrupt purposes the same computer-generated database of information as do the investigators.

- The code of silence and the principles of solidarity which are part of the police culture inhibit particularly "rank and file" police from reporting suspect conduct to superiors and invariably produce a response to investigators which is generally unhelpful.

- Corrupt activities by police are of necessity secretive and clandestine. The very nature of the prohibited drug and of the market which deals with it aggravates the difficulty of detecting corrupt police activity.

- Offenders are unlikely to complain if police steal drug money in respect of which no charge is laid or if police, having seized a particular quantity of a drug, charge the offender with a lesser quantity. The practice is referred to by police as "taxing" or "skimming". Nor is an offender likely to complain if his/her prior criminal drug convictions are not given to the court.

- The retained money is rarely banked and the relevant drugs are used for personal use or sold or used by buy information or are "planted". In any case, the illegal activity occurs under cover and the accurate details are never recorded in police records or indices.

It is not surprising therefore that during Operation Shield the corrupt or improper conduct by police which was identified included:

- drug use
- drug dealing
- the protection of drug dealers
- the theft of drugs
- the theft of drug money
- the presentation of false material to the court.

Investigative work of this kind, therefore, has to make use of covert surveillance processes, informants, co-operating witnesses and needs to draw heavily on the range of coercive powers available under the *Criminal Justice Act 1989* and like legislation. It is expensive and resource intensive. It requires a "state of the art" investigative approach.

The CJC's resources supporting the Carter Inquiry were supplemented by the assignment of hand picked QPS investigators. In his report Judge Carter recommended that additional resources and funding be made available to the CJC to continue this work. Although approximately 14 police officers were charged as a result of Operation Shield, some 20 odd other police suspects required immediate investigation. Since that time many more suspect police have been identified by the Complaints process and intelligence collection and analysis.

Very unfortunately, the Carter recommendation for additional resources was summarily rejected by Government on the basis that the CJC was already funded to do such work. This response does not recognise that the drastic reduction of other complaint based misconduct investigations is no solution, but would only deepen the growing problem. The skeleton team now left to pursue the identified Operation Shield targets can only deal with a handful at a time. The problem will grow until more drastic action is "required".

The past experience in both Queensland and New South Wales has seen the need for Government to commit enormous resources to the detection and exposure of corruption and corrupt police. These 'one–off' episodes, which have been high profile, have nonetheless attracted criticism, in spite of their apparent success, on the basis that not enough was achieved. It is a more logical and a more cost-effective use of resources to adequately and reasonably resource a permanent

ongoing effort, provided that the structure is sound and that the methodology adopted is effective in providing a proactive investigative approach to the various forms of corruption within the QPS.

In short, the need to commit huge resources to investigate what has happened in the past is a poor substitute for adequately and reasonably resourcing a present proactive investigative strategy designed to seek out, identify and prosecute those who are presently intent on compromising the good name of the Queensland Police Service and which will act as a powerful ongoing deterrent to the development of insidious corruption.

The two processes of complaint and pro-active investigation are complementary and integral to the execution of the CJC's overall statutory responsibility.