

Queensland Police Union of Employees

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Crime & Misconduct & OLAB 2014
Submission 038

Legal Affairs and Community Safety Committee
Parliament House
Brisbane 4001

By e-mail: lacsc@parliament.qld.gov.au

Dear Chair,

Re: Crime and Misconduct and Other Legislation Amendment Bill 2014

There have been two very significant and recent reviews conducted by the Government into the operations of the Crime and Misconduct Commission (CMC).¹ These reviews have formally uncovered what the Queensland Police Union of Employees and its almost 11,500 members have endured for more than a decade – total mismanagement of internal investigations.

This submission is prepared as part of the call for public submissions by your Committee.

Definition of Corruption

Official Misconduct has been removed from the Act. The change in terminology from official misconduct to 'corruption' or 'corruption offence' is very concerning for QPUE members – serving police officers of this state. If there is something other than their lives or the lives of others that police will go to great length to protect it is their own credibility, standing and integrity. This is for good reason, once a police officer is perceived to lose any of these character attributes they are no longer respected by Queensland Police Service (QPS) hierarchy, the community, the courts or their colleagues. It is highly concerning that under Schedule 2 of the Bill 'corruption' or a 'corruption offence' is defined as including 'police misconduct'.

¹ Independent Advisory Panel (constituted by the Honourable Ian Callinan AC and Professor Nicholas Aroney (Callinan/Aroney)) of the Crime and Misconduct Act 2001(CM Act) and related matters; and the inquiry by the Parliamentary Crime and Misconduct Committee in to the CMC's release and destruction of Fitzgerald Commission of Inquiry documents.

It is without doubt that most police misconduct is not corrupt in nature, in fact only very few instances of police misconduct are ever and rarely corrupt in nature.

The definition is so broad that we have recently had police found to have committed police misconduct for:

- off duty drink driving
- Breach of QPS no-pursuit policy for attempting to apprehend a violent offender,
- losing police property
- incivility to a member of the public when issuing a traffic ticket

Police misconduct can also include conduct such as:

- not wearing a police hat whilst in public and on duty
- not having your shoes polished
- handing in paperwork in a tardy manner

The above conduct does not have any elements of 'corrupt' behavior, and these definitions in this bill need to be changed before the bill is debated. To think that off-duty drink driving, so not only not in a work vehicle or even at work, if committed by a police officer, is now corruption is ridiculous. This alone means that many MPs and Ministers in the past would technically have been guilty of corruption under these ludicrous new definitions if they were police officers.

A police Officer should not and must not be subjected to the stigma of 'corruption' unless it is truly warranted. If a police officer conducts him/herself in a corrupt manner the officer would still be captured by the definition of 'corrupt conduct' as defined in section 15 of the Bill without the other definitions requiring the inclusion of police misconduct. The QPUE demands the removal of police misconduct from the definition of the 'corruption' and 'corruption offence'.

Concentration of Resources on 'corruption', 'misconduct amongst high level departmental employees' and 'systemic conduct'

The QPUE notes the concerns of the Callinan Aroney Review that large quantities of CMC time and resources are being spend dealing with complaints about comparatively trivial transgressions. The QPUE fully supports this recommendation. The QPUE, experience weekly instances were cases relating to police officers have been delayed from being finalised for many months and often years because of not just CMC incompetence however also unjustifiable and unexplainable delays.

Although the QPS must evenly share the blame for the unnecessary delay in the police discipline system, the CMC most certainly have to also accept responsibility also for a large portion of the problem of delay in resolving matters.

The CMC continue to meddle in police misconduct investigations/complaints even in circumstances where a significant penalty or termination of employment is never reasonably in range or a consideration. This meddling often causes months and sometimes years in unnecessary delay.

A consistent approach to the findings of the Callinan Aroney Review would be to ensure the CMC cannot meddle in police misconduct investigations or discipline hearings unless termination of employment would be a reasonably valid outcome if the complaint is proven. In all other circumstances the Commissioner of Police possess the statutory responsibility for discipline within the Police Service. If this was the case the CMC would only be involved in serious matters and therefore the unnecessary delay of matters of a less serious nature (matters that would not reasonably incur termination of employment). This would free up resources for the CMC to provide to other areas and it would also significantly reduce the delay in the police discipline system. Matters would not be going back and forth between the CMC and QPS for months just to decide small trivial matters. There have been occasions when paperwork has been sent by the QPS to the CMC as the file was a 'review before' matter only for it to take more than six months for the CMC to provide a response. This is unacceptable and this type of conduct was clearly identified during the Callinan Aroney Review.

There are two aspects of power that the CMC possess in regards to police misconduct:

1. The right to give directions into police misconduct investigations; and
2. Right of review/appeal to the Queensland Civil and Administrative Tribunal (QCAT) in regards to disciplinary decisions from departmental disciplinary hearings.

The QPUE is very disappointed the Government decided to wind back the ability of the CMC to unnecessarily meddle in other government departments however did not touch the provisions to provide the CMC do not unnecessarily meddle in police misconduct matters. The CMC's performance in the police misconduct arena for many years has been dismal. It is incapable of dealing with matter in a timely manner and has rarely been successful in any criminal or disciplinary action pursued against QPUE members.

Recently the CMC has resorted to 'petty' litigation of matters in QCAT where they seek a disciplinary sanction imposed by the QPS be only slightly changed and in circumstances where termination of employment was never a possible outcome.

Example One: An officer was had a disciplinary breach and reduced one pay level for twelve months. The CMC filed a review and sort for the officer to be reduced two pay levels for twelve months. The CMC review was unsuccessful.

Example Two: An officer was reduced multiple pay points but the reduction was wholly suspended for two years with conditions. The CMC filed a review seeking the removal of the suspension. The Officer wanted the matter finalised as it had already been a number of years since the incident first come to the attention of the QPS so he consented to what the CMC was seeking.

Termination of employment was never an option in these two examples. The CMC must be restricted both under its investigative powers and appeal rights to police misconduct matters where termination of employment is a reasonably valid outcome. The CMC's constant meddling undermines the attempts to operate a timely, fair and efficient discipline process.

The CMC's main focus should be around 'suitability to remain a police officer', high level misconduct and systemic misconduct. The CMC's ongoing meddling in trivial police misconduct matters is something the QPUE demands this Government move to prevent.

Further evidence warranting winding back CMC powers in regard to police misconduct matters where termination of employment is not a reasonably valid outcome

The QPS and CMC along with significant input from the QPUE engaged in Project Verity for more than 10 years. This resulted in the implementation of the Administrative Consensual Disciplinary Process (ACDP) being implemented in the Queensland Police Disciplinary System. This is a process that is akin to the criminal plea of guilty where a short document outlining a summary of facts is presented to the officer at an early stage with an indicative sanction that is to be imposed. Theoretically an officer should have been able to tick a box accepting or declining the allegation and sanction – the matter would then be finalised in a matter of weeks rather months or years. ACDP is not a process that would be adopted for an officer facing termination of employment. Given the CMC's attitude to ACDP an officer can no longer complete the form accepting the conduct and sanction without first providing full supportive submissions and documentation on the off chance the CMC will review the matter. A review is on the material in the proceedings below and if an officer does not go to the effort of preparing full submissions and supportive documentation then they place themselves in serious danger of being significantly disadvantaged later in the QCAT proceedings if the CMC decide to review/appeal.

It has come to the point where the QPUE has now formally called for the removal of ACDP from QPS policy and informed its membership not to accept ACDP under any circumstances. This decision is solely based on the conduct of the CMC in these types of proceedings.

The requirement to prepare submissions and supportive documentation now removes the key intention of this process – timeliness.

It is ridiculous that the Commissioner of Police and a police officer can come to agreement on ‘consent orders’ in the proceedings, proceedings where termination is not a valid outcome, yet the CMC can later appeal that consent order. We are unaware of any ‘consent orders’ under Queensland law that are able to be reviewed in the same all encompassing manner that the CMC can arbitrarily review QPS ACDP consent orders.

The Callinan Aroney Review specifically found that large quantities of CMC time and resources were being spent dealing with complaints about comparatively trivial transgressions. This Bill appears to adopt that philosophy in all aspects except those surrounding police misconduct. The CMC must be prevented from engaging in police discipline investigations or QCAT proceedings of the police discipline process for trivial matters (matters where termination of employment is deemed to be a valid outcome). If termination of employment is not a valid outcome the responsibility for managing and disciplining police officers should be, and currently is, a legislative responsibility of the Commissioner of Police.² It should be something that is taken into account during appraisals of the Commissioner’s performance.

² See section 4.8(2)(l) *Police Service Administration Act*.

To ensure the issues raised in this, the QPUE's submission, are addressed, the Committee should recommend the Bill be revised with specific amendments the following Acts:

- Chapter 2 Part 3 – section 33-51 *Crime and Misconduct Act*; and
- Section 219G (1) *Crime and Misconduct Act*; and
- Sections 41 and 42 *QCAT Act*

I am available on 3259 1900 to discuss the matters I have raised.

Yours Faithfully

A handwritten signature in blue ink, appearing to read 'Ian Leavers', with a long horizontal flourish extending to the right.

IAN LEAVERS
GENERAL PRESIDENT & CEO