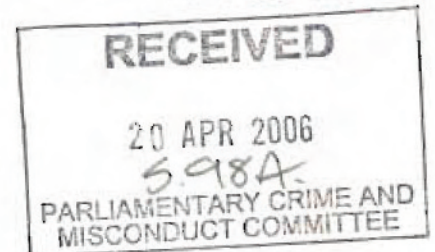


19 April 2006
Ref. No. E:/Rosslyn/Law Reform/CMC review.let

Chairman
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE Q 4000



Dear Sir

Three Year Review of the Crime and Misconduct Commission

Please find **enclosed** the Youth Advocacy Centre's (YAC) submission on the three year review of the Crime and Misconduct Commission.

The submission is dated 2003 as it the written material on which Youth Advocacy Centre based its oral submission to the Committee in 2003. Youth Advocacy Centre also provided oral submissions to the Committee in 2000. We have elected to provide similar material, as we are of the view that few things have changed in the relationship between young people, the Police and the CMC in the last 3 to 6 years. YAC continues to have the same concerns.

In the 3 years since the last review, the CMC has released a number of reports that directly impact upon young people. These reports include:

- ◆ Protecting Children: an Inquiry into Abuse of Children in Foster Care;
- ◆ Police Powers and Volatile Substance Misuse: A Review; and
- ◆ Responding to Volatile Substance Misuse: Evaluation of the Places of Safety Model.

In YAC's view, these reports made recommendations that are highly detrimental to young people both in terms of their interaction with police and the quality of services that young people receive from government. The CMC clearly does not appreciate the issues that affect young people and have ignored any input from the community about young people. Consequently the confidence that YAC has in the CMC has significantly diminished in the intervening 3 years.

Should you have any queries in relation to our submission, please do not hesitate to contact me.

Yours faithfully

[Original Signed]

Rosslyn Monro
Director

Response to the Parliamentary Crime and Misconduct Committee

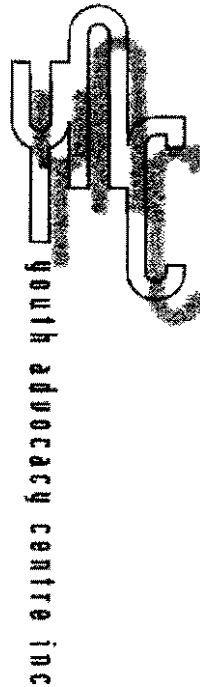
of the

**Three Year Review of the Crime and Misconduct
Commission**

prepared by

Youth Advocacy Centre

2003



Youth Advocacy Centre

Youth Advocacy Centre (YAC) is a community legal centre which offers legal and welfare assistance to young people between the ages of 10 and 17. The geographical area which the Centre services is largely the Brisbane area, with some occasional assistance to young people in other areas of the state. The nature of the Centre's work ranges from legal advice, representation, education, counselling, family mediation, and support for young people around issues such as accommodation, income. The Centre also participates in law and policy reform activities. The Centre has been in operation since 1981.

Casework Examples

YAC welcomes the opportunity to make submissions on the Three Year Review of the Crime and Misconduct Commission. YAC is particularly interested in providing the committee with some insights into young people's dealing with the Crime and Misconduct Commission (CMC) and suggest how the CMC might increase young people's access to the CMC complaints process. This can be best illustrated with two casework examples from the work of the Centre.

Casework Example 1

The first casework example involves a young person who found the courage to make a complaint about abuse of police powers to the CMC. In YAC's experience this is not a typical example. The client was assaulted by a police officer in the course of an interview. In February 2002, a YAC solicitor wrote to the CMC about the incident. Later in February the CMC replied that the matter was referred to Queensland Police Service (QPS) for investigation. The CMC advised that they would play a monitoring role. In May 2002 QPS sent YAC a letter advising of their internal investigation. Hearing nothing further, in October 2002, YAC wrote to QPS requesting an update on the progress of their investigations. Finally, in May 2003 QPS replied that the grounds of complaint had been founded, based on admissions by the police officer involved. During this period the police had interviewed our client, without advising the client's solicitor of this interview. QPS explained that the officer, as a result of the complaint, would be disciplined by receiving extra supervision and training. During this 16 month period YAC was not advised by the CMC about the progress of the investigation in the CMC's capacity as a monitor.

At the time the incident arose, the client had no criminal record. This client is now entrenched in the youth justice system, and the client and his family have lost respect for the authority of the QPS as a result of this young person's experience. Understandably the client is disenchanted with a system that subjects a police officer to a slap on the wrist and a young person to the legal process for the same type of offence.

Casework Example 2

The second casework example is a more typical of young people's experience. It involves a situation where a young person has experienced the misuse of police powers, but does not make a complaint. Our 14 year old client, of small stature was being held in a room at the police station. Present in the room was a police officer who assaulted our client by hitting their head against the concrete wall of the room. As a result of the assault our client was incoherent. In this physical state, our client was interviewed by the police about a minor matter, and was accordingly charged. A YAC solicitor provided our client with advice about making a complaint to the CMC. To date our client has not made a complaint, and is not likely to make a complaint, as he is fearful of police reprisal. The young person would ideally like to fix the problem, but believes he is running a grave risk by doing so. As a result of this young person's experience, he and his family are disenchanted with and fearful of the police. There are many more young people with similar complaints who feel disempowered from engaging with the CMC complaints process.

These casework examples illustrate the Centre's concerns with the CMC's complaints process and the disincentives experienced by young people who have legitimate complaints against the police.

Young People's Vulnerability to Abuses of Power

A large component of the Centre's work involves assisting young people who have had some involvement with the youth justice system or who are at risk of involvement in the youth justice system. Many of these young people are subject to dealings of some kind with the QPS. Many young people are not aware of their legal rights in dealings with police and have been socialised to accept the authority of police, without thought of possible future consequences. Consequently young people accept and act on information given to them by the police without realising the potentially detrimental legal consequences.

The law clearly recognizes that young people must be given special consideration when dealing with authority. Examples of this include:

- The establishment of a separate jurisdiction to deal with justice issues involving young people.
- The *Juvenile Justice Act* requires young people to be afforded special protection during an investigation or proceeding and that a decision affecting a child should be made and implemented within a time frame appropriate to a child's sense of time.
- The *Police Powers and Responsibilities Act* requires that a young person has an independent person present, when questioned by police for indictable offences.

It is important to note that police have more contact with young people than with any other segment of the population. A 1992 nationwide study by the National Youth Affairs Scheme found that 80% of youth had been stopped and spoken to by police. In the same study, one-third of young people reported "being roughed up" by police, usually at police stations and large percentages of young people were sworn at,

pushed, and hit by police. Another part of the study found that over half of police officers admitted that too much force is often used on young people¹.

Given young people's frequent contact with police and young people's vulnerability in dealing with authority, it is important that CMC complaint mechanisms are appropriate for young people. Young people must be able to access the complaints process and trust that the process to deal with their complaint sensitively and confidentially. However, in YAC's experience, young people experience a range of barriers in accessing the CMC complaints process.

Barriers young people face in accessing CMC complaints process

Timeframe

One of the barriers to initiating a complaint is the time in which it takes the CMC to finalise the matter. In the first casework example, it was sixteen months from the time the YAC solicitor lodged the complaint with the CMC, before the process culminated. This time-frame is not in accordance with a young person's sense of time. Young people often wish "to get it over with" and are reluctant to re-visit issues that occurred in the past. When many young people are advised that the complaints process is likely to take 18 months to 2 years, many of them are dissuaded to make a complaint on this fact alone.

Involvement of QPS in complaints process

Many young people are dissuaded from making a complaint when they are advised that they need to either make the complaint directly to a police officer, or have the matter referred from the CMC to the police. Young people are fearful that they will suffer reprisal from police if they make a complaint about the police. Young people are also concerned that police will not be held accountable on the basis of a legal technicality. Once a young person's trust of police is breached, it is very difficult for them to trust another police officer.

Likely Outcomes

Another disincentive for young people wanting to make a complaint is that they lack confidence in the process being able to deliver a positive or satisfactory outcome at the end of the process. For example, in the first casework example, the result at the end of the sixteen months was not fair. The lack of parity of outcomes gave the young person, his family, and his friends the message that police officers have the right to commit crimes and that young people have no protection from the police.

Perception of CMC Independence

Young people do not always distinguish between one bureaucratic body and another. The CMC and the police may not appear separate to young people, despite the CMC's independent statutory role. For instance, the CMC brochure "Making a

¹ <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/youth-perceptions.htm>.

Complaint Against a Police Officer” has a police badge on the front cover and refers young people to take the matter back to the police. Young people do not differentiate between the officer who mistreated them and an officer that might investigate the mistreatment. Young people have a very real fear of reprisals from the police, if they make a complaint. Similarly, if young people are familiar with the CMC’s other function of investigating organised crime, including drug matters, it could discourage them from lodging a complaint about police misconduct out of fear that the CMC may be investigating the young person’s behaviour.

Lack of support in the complaints process

Should a young person overcome their fears of complaining about the police, the complaint mechanism is not very accessible to young people who are not supported in the process. The young person in our first case example was lucky to have a solicitor who was familiar with the process and could support the young person through the process. This solicitor was able to inform the young person of the complaints process, and the solicitor wrote the complaint and controlled the communications. This is rarely the reality for young people in such a situation.

When an unsupported young person wishes to make a complaint, they are faced with a bureaucratic process. The CMC website commendably lists many options for how to make a complaint. One option is to write a letter. However, without more specific guidelines young people may not know where to begin, and in turn, be discouraged from complaining. Providing a web form is useful, but for young people, some important information is not outlined, such as the date of the allegation (a pertinent fact likely to be omitted from a description by a young person). Young people are not given the option to make a complaint over the phone, which might be preferable.

It should be noted that many clients who are offered support in making a complaint to the CMC, do not wish to take up the offer for all the reasons mentioned previously.

Monitoring role of CMC

Another concern from our first casework example was the lack of apparent monitoring of QPS investigations by the CMC. Monitoring is particularly important when handing a matter concerning police misconduct over to the police to handle, as there is clearly a conflict of interest.

Suggested amendments to the CMC complaints model

Any changes to the CMC complaints model should consider the special needs of young people.

- ◆ **Appropriate information for young people:** There must be age-appropriate information available about making a complaint to the CMC. Further, the information must convey the independence of the CMC from the QPS. This information should be accessible by young people.

- ◆ **Support for young people in the complaints process:** Young people must be meaningfully supported through the complaints process, either directly by the CMC or by making appropriate external referrals to agencies that may be able to support a young person.
- ◆ **Complaints dealt with in a timely manner:** The complaint process must be dealt with in a timely manner so as to align with young people's sense of time. As recognised in the *Juvenile Justice Act* a young person's sense of time is a relevant factor in ensuring the process has some meaning for the young person. Young people are not interested in pursuing complaints processes which will only have an outcome 16 months later.
- ◆ **Question the appropriateness of complaints to be referred back to QPS:** It is inappropriate for young people's complaints against the police to be referred back to the police. The *Crime and Misconduct Act 2001* (the Act) states that the CMC "may" refer complaints to police. However, in YAC's experience, most complaints are referred back to the police. Although the Act does say that issues of police misconduct should be primarily dealt with by the police commissioner, it does not say that they should solely be dealt with by the police commissioner.

Section 34(d) of the Act states that the CMC should deal with particular matters of misconduct, when there is "any likely increase in public confidence in having the misconduct dealt with by the commission directly." It should be recognised that what has integrity for older members of the community is not necessarily the same for young people. Because of young people's general negative perceptions of the police, CMC should control investigations of police misconduct. An independent body investigating such allegations could ultimately improve the public's view of the integrity of the police, as well as the legitimacy of the CMC complaints process.

- ◆ **CMC must closely monitor complaints referred back to QPS:** In cases when the CMC does delegate the investigations to the police or another public authority, it must monitor the process to ensure that the complaint is followed through completely and that the conclusion is fair. A CMC monitoring function could also ensure that complaints are handled in a timely manner.
- ◆ **Monitor patterns of police misconduct:** Finally, the CMC should monitor patterns of allegations of police misconduct with regard to young people, and to bear in mind that there are many young people not represented in the process. In alignment with the CMC's goal to combat corruption, monitoring and identifying patterns of misconduct will also help to protect young people from misuses of power.

CONCLUSION

The two casework examples illustrate the many barriers faced by young people who have grounds for complaint against police. There are many more young people who elect not to complain than those who do. The CMC should work to make the complaints process more accessible to young people.