



QUEENSLAND POLICE SERVICE

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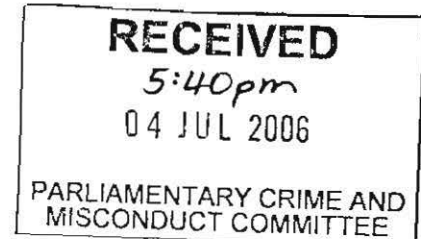


04 JUL 2006

Our Ref:

Your Ref:

Mr. Geoff Wilson
Chairman
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE 4000



Dear Mr Wilson

Three Year Review of the Crime and Misconduct Commission

I refer to your letter of 7 March 2006 inviting submissions to assist the Parliamentary Crime and Misconduct Committee (PCMC) in conducting its three year review of the Crime and Misconduct Commission (CMC) in accordance with section 292(f) of the *Crime and Misconduct Act 2001* (the Act).

It is noted that the Act's purposes and how such purposes are to be achieved are set out in ss. 4 and 5 respectively. The primary purposes of the Act as it relates to the Queensland Police Service includes: combating and reducing incidents of major crime; the continuous improvement of the integrity of the police; and reducing incidents of misconduct in the public sector and confiscation related activity for the enforcement of the *Criminal Proceeds Confiscation Act 2002*.

Following are comments by the Queensland Police Service (QPS) for your consideration.

- **CMC's handing of complaints of public sector and police misconduct**

A concern that continues to be raised in dialogue between the Queensland Police Union of Employees and the Service is the length of time taken to finalise police internal investigations. In some cases, following the receipt of the initial complaint by the Commission, the assessment takes, on average, between 6 to 10 days and at times up to 3 weeks when the complainant is indigenous.

However, in pressing or emergent situations it has been the Service's experience that assessments are made almost immediately by the Commission.

The Service acknowledges that the nature of each complaint is unique with the extent of the investigation required to finalise a complaint dependent upon the seriousness of the conduct or inaction being complained about. Moreover, it is often the case that collateral issues evolve out of the same set of facts being investigated - this often clouds the original complaint and further delays the matter being finalised.

It is the Service's submission that it is in the public interest and that of Service personnel that assessments of alleged police misconduct be undertaken within 24 hours of receipt and a determination made as to the appropriate course of action taken to finalise a complaint. For example, retained by the CMC for investigation, returned to the Service for investigation or managerial resolution.

- **The QPS complaint management process and the CMC's over viewing role**

The process in place to manage complaints against police officers is contained within the *Police Service Administration Act 1990* and the *Crime and Misconduct Act 2001*.

Section 7.2 of the *Police Service Administration Act 1990* complements Division III and IV of the *Crime and Misconduct Act 2001* by requiring members of the Service to report suspected misconduct to the Commission. This legal requirement is implemented, in an administrative sense, through the Service's Human Resource Management Manual.

The head of power for the Human Resource Management Manual is section 4.9 of the *Police Service Administration Act*. In effect, the Police Commissioner's orders contained within the Manual are a form of delegated legislation (the breach of which subjects the errant member to administrative sanctions) and ensures the appropriate management of a complaint from its receipt until its finalisation.

Depending upon the gravity of the alleged misconduct the matter may be dealt with as a breach of discipline and finalised internally through disciplinary or managerial action, or classified as misconduct or official misconduct where criminal behaviour is suspected and then referred to the Commission. Upon an assessment of the seriousness of the conduct alleged, the Commission may return the matter to the Service for investigation or investigate the matter itself. Throughout this entire process the CMC retains an ongoing role of over viewing the Service's disciplinary processes and regularly calls for and audits investigations undertaken by the Service.

In terms of the Service-wide management of complaints the Service's Ethical Standards Command has a co-ordination, investigation and preventative role in dealing with corruption prevention, police misconduct, and breaches of discipline. The Command meets regularly with the Commission where individual cases are discussed and progress reports provided. It is in this forum that general advice and assistance is also provided to the Service in terms of case management.

Understandably, when criminal behaviour is being alleged against a police officer a difference of opinions may at times occur with respect to the appropriate action required to bring a matter to a conclusion. Police who are the subject of allegations of criminal conduct are generally experienced witnesses for court purposes, are legally supported by their Union and have a greater knowledge of the law than most citizens. A recommendation to initiate a criminal prosecution by the Ethical

Standards Command is determined with the awareness that the matter will be strenuously defended and all avenues of appeal pursued.

In making a recommendation to initiate a criminal prosecution the Ethical Standards Command gives serious consideration to the recommendations of the police officer tasked to investigate the alleged misconduct. The investigating officer, (normally an Inspector of Police) having given evidence on a number of occasions and having the benefit of interviewing the witnesses, forms an opinion as to the credibility and the weight that a court may place on the witnesses testimony and any other items of corroborative evidence. These recommendations are then overruled in a legal and policy sense before a final recommendation is made as to whether a criminal prosecution or disciplinary action should be commenced.

The Ethical Standards Command, in addition to any legal and evidentiary considerations, will take into account the underlying factors identified by the investigating officer that may well affect the outcome of any potential trial. For example, the degree of intelligence of a witness, the witness's preparedness to see the matter through to a conclusion, pre-existing relationships with the police officer and criminal convictions of the complainant all either directly or indirectly impact upon the ultimate outcome of a criminal trial. Furthermore, the view expressed by the Ethical Standards Command that a matter can more appropriately be dealt with through the QPS disciplinary regime rather than the commencement of a criminal prosecution is a view that also takes into account such considerations as: failed prosecutions of police officers for similar offences; time delay in finalising criminal prosecutions; and whether the totality of the conduct would be more appropriately addressed within the QPS disciplinary regime.

At times, the recommendations of the Ethical Standards Command concerning the criminal prosecution of an officer conflicts with the Commission's view.

However, despite these differences of opinion on the particular course that an investigation should take most matters are amicably resolved with a satisfactory outcome for both the Service and Commission.

- **The CMC's role in the prevention and investigation of major crime**

The Service is cognisant of the CMC's complementary role in preventing and investigating major crime with the CMC and State Operations Command sharing a positive working relationship. A number of investigations have been enhanced through joint efforts and access to coercive hearings. The Ethical Standards Command's investigative and intelligence areas have also benefited from information and intelligence sharing.

Occasionally the issue of duplication of effort still arises, however, the inclusion of the CMC on the Operations Management Board is designed to address this issue.

- **The use and effectiveness of the CMC's investigative powers in performing its functions**

The QPS acknowledges that the CMC is a standing Commission of Inquiry and has no issues with respect to the effectiveness of the CMC's investigative powers in performing its functions. At an operational level within the Queensland Police Service there have been submissions made for the CMC's investigative powers in relation to organised crime and police misconduct to include telephone intercepts. Whilst the Service appreciates that this is a policy consideration for government that may be outside the scope of this Review, the Service strongly supports the introduction of telephone interception powers for both the CMC and the Queensland Police Service.

- **Devolution of responsibility for prevention of and dealing with misconduct**

The Service endorses the role performed by the CMC as it relates to its devolution of processes for the prevention of and dealing with misconduct. This matter has also been addressed under the heading QPS CMC complaint management processes (above).

- **The CMC's lead role in building the capacity of the public sector, including the Queensland Police Service, to prevent and deal with misconduct.**

The QPS attends the CMC's Departmental Liaison Officer forums and meets weekly with officers from the CMC. The Service endorses the role of the CMC in terms of capacity building. The benefits already achieved within the QPS in creating an atmosphere of accountability and transparency are testament to the assistance provided by the CMC in that regard.

- **The CMC's research role**

At times the Queensland Police Service has been of the view that some CJC/CMC Research publications and associated recommendations have not fully recognised either budgetary and resource considerations or the work done by the Queensland Police Service in a particular area.

This is overall not of great concern and there has been a good working relationship with the two past Directors of the Research Division namely Dr David Bereton and Dr Paul Mazerolle.

The recent appointment of Ms. Sue Johnson as Director of Research following Dr Patel Mazerolle's departure has seen the CMC Research Division continue to take on projects that have significant practical relevance to the Service and that take into account the financial constraints under which the Service operates.

The Service continues to work in collaboration with the CMC on projects where appropriate. Latter-day projects undertaken by the CMC such as the "Predictors of Complaints against Police" and "Attrition from the Service (Project Barossa): Building the case for early warning systems" are relevant to the good governance of the Service and provide useful reference points for the formulation of internal management policies and procedures. In all, the Research Division is well regarded for its capacity to provide sound and well based advice and assistance to the Service.

- **The CMC's witness protection function**

The Service's experience with the witness protection area of the CMC has been and continues to be extremely positive.

- **Corporate governance issues**

The Service has no issues to raise with the corporate governance in place in the CMC. Recently the CMC supported the QPS in a review of the operation of the QPS – IAC.

- **The accountability of the CMC, including the role of the Parliamentary Crime and Misconduct Committee and the office of the Parliamentary Crime and Misconduct Commissioner.**

The Service believes that the over viewing regime currently in place has and will continue to ensure the accountability of the CMC. Furthermore, the Service has no issues with the role performed by the Parliamentary Crime and Misconduct Committee and the office of the Parliamentary Crime and Misconduct Commissioner.

In addition to the current accountability regimes the Service acknowledges that a party aggrieved by the actions of the CMC can obtain redress through mechanisms independent of the PCMC, such as the courts or by way of appeal to specialist appellate bodies such as the Misconduct Tribunal.

However, one issue of concern to the Service has been a past practice of the CMC in not complying with what is widely referred to in administrative law as the 'hearing rule' prior to releasing reports that are relevant to or contain comments regarding policing matters.

Some of these reports contain material which may be perceived as being critical of Service management/policies/procedures, or contain adverse findings against the Service or make recommendations that will represent an impost on the Service's resource allocation. On occasions draft reports have been provided to the Service for comment, however the timelines for a holistic and considered response have been inadequate. Similarly, subsequent final reports are at times only provided to the QPS on the day that they are publicly released. The consequence of both of these processes is that the QPS is unable to value-add to the fullest extent in preparing its response to the content of the final or draft reports.

The Service therefore requests that consideration be given by the CMC to a process which allows sufficient time for a considered response to draft reports and for sufficient time to analyse final reports prior to their release publicly.

- **The overall performance of the CMC**

In summary, over the years the Service has established and continues to maintain a highly professional working relationship with the CMC. In terms of investigating police misconduct and taking steps to proactively prevent its occurrence, both organisations have been successful in their joint efforts.

At officer level, the Ethical Standards Command meets weekly with officers from the Commission where cases and items of mutual interest are discussed. In more recent times, in the complaint management area this process has been strengthened with the dialogue being formally minuted then actioned and feedback provided at subsequent meetings.

At Senior Executive level the QPS has recently attended a joint meeting of the CMC Chairman and Commissioners with the Commissioner of Police and Assistant Commissioner Ethical Standards Command. There was consensus that such meetings are of value to both organisations and it was agreed that they would continue.

The Queensland Police Service has a firmly entrenched culture of *not* tolerating misconduct by its members and is committed to cooperating with any external agency, over viewing body or Inquiry to ensure that any illegal or improper conduct by its members is appropriately dealt with.

In addition a number of recent criminal prosecutions of police officers commenced by the Ethical Standards Command provides evidence of this cultural shift together with a number of well publicised cases where officers have been arrested by their colleagues for criminal and non-criminal offences such as bodily harm, drink driving, other summary offences and domestic violence matters.

Other Issues

The Queensland Police Service as an organisation is far removed from the Queensland Police Force that existed at the beginning of 1987 the year the Fitzgerald Inquiry commenced.

There is however a history, at least within Police Departments in English speaking western world countries that Police Departments can go through cycles of corruption, reform, slippage, corruption.

Many Police Officers today in the Queensland Police Service have no memory of the Fitzgerald Inquiry. It is essential that the gains made are not eroded by slippage. The CMC has a vital role to play in that regard. I believe that the CMC is an essential unit within the Queensland public sector environment.

At a personal level I acknowledge the close working relationship, availability and support of the past and current chairs, Mr Brendan Butler and Mr Robert Needham. In particular the capacity when managing an unfolding serious matter involving allegedly or implied police misconduct to able to advise the media, (and thus the public) that the investigation of the matter will be overviewed by the CMC.

Conclusion

I trust that this information is of assistance to the Committee's review and thank the Committee for allowing the Service with the opportunity to provide a submission as part of the review.

Please do not hesitate to contact the Assistant Commissioner Ethical Standards Command, telephone 3364 3798, should you require any further information.

Yours sincerely,

[Original Signed]

R ATKINSON
COMMISSIONER