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31 OCT 2008

PARLIAMENTARY CRIME AND
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29 October 2008

Parliamentary Crime and Misconduct Committee
By email: pcmc@parliament.qld.gov.au

Dear Mr Hoolihan,

Re: Three Yearly Review of the Crime and Misconduct Commission

I am a Senior Lecturer in Law at The University of Queensland. My research focus is on the impact of the law and the legal system on people experiencing social and economic disadvantage. Many of those who have participated in my research interact with police officers on a daily basis; they may be known to police as a result of their state of homelessness, or because they, or members of their family, have a criminal record or have been incarcerated. Others work closely with these vulnerable people, either as advocates or social workers. Respondents to my research, therefore, have much to say regarding the conduct of police officers, and the complaints processes relating to them.

Any information I have collected in relation to the CMC, and any interactions I have had with the CMC, have been merely incidental to my work. However, there are two points I wish to make with regard to the operations of the CMC based on my research.

1. Complaints in relation to police misconduct

Respondents to my research have consistently indicated that the CMC's **public sector complaints mechanisms are seriously flawed**. In 2006/07 I conducted research involving interviews and focus groups with 131 people experiencing poverty and homelessness in Brisbane, Townsville and Cairns. This research culminated in the *No Vagrancy Report*.^{*} Many of the respondents to this research alleged that their complaints to the CMC regarding misconduct of police officers had either been ignored, or referred back to the Queensland Police Service (QPS) to be dealt with internally.

In many cases, the allegations being made with regard to police officer misconduct were extremely serious, involving assault, unlawful searches, harassment and intimidation. Yet respondents to my research felt that they had not been taken seriously by the CMC when making a complaint. One respondent said:

^{*} Available at <http://www.law.uq.edu.au/tamara-walsh>.

'Basically they put you on a waiting list. They stuff you around to put it straight.'

Another said:

'You go make a formal complaint and all that happens basically is they give you a form to fill in.'

Yet another said:

'You never win – they're always going to win.'

For those who interact with police officers on a daily basis, internal review is a dangerous prospect. The respondents whose complaints had been referred back to QPS reported that they had since been subjected to greater levels of police 'harassment' and 'intimidation'. Some respondents said that since making a complaint, they feared for their physical safety at the hands of police officers. One said:

'I can't walk down the street and feel safe'.

Another said:

'All their mates are in the same squadron – they all pull you over and they start harassing you.'

The general perception amongst respondents to my research was that the CMC is not independent of the police service. As a result, many expressed a reluctance to make a complaint to the CMC regarding police officer misconduct.

Other respondents said that while they would have liked to have made a formal complaint regarding police officer misconduct, they were unable to successfully navigate the CMC complaints system on their own.

The *No Vagrancy* research also canvassed the views of 54 criminal justice professionals, including community lawyers, Legal Aid lawyers, prosecutors, magistrates and judges. Some of these respondents expressed similar sentiments regarding available complaints mechanisms. One community lawyer wrote to me saying:

'It is almost universally acknowledged by those who actually practice at the coal face of the criminal justice arena, that a system which invariably sees the CMC referring complaints against the police back to the police for investigation, is next to useless in terms of any meaningful police accountability. Indeed, it is akin to a jury system, wherein the entirety of the jury is made up of family and friends of the accused. Such a jury system would not be tolerated for one second – and yet the issue relating to the manner of police scrutiny in Queensland has dragged on for years. Such is not only an affront to the good citizens of Queensland – it is also an affront to the vast majority of those employed in the Queensland Police Service who serve with distinction.'

2. The public nuisance review

The methodology utilised and conclusions reached by the CMC in its review of the public nuisance offence (released in May 2008) likewise raise concerns regarding the CMC's effectiveness in ensuring the accountability of police officers. My full response to the CMC's public nuisance review will be published in due course, however my key concerns regarding its approach are outlined below.

In its report, the CMC concluded that since the introduction of the public nuisance offence, there has been no uncommon increase in the number of prosecutions for public nuisance. Yet, only a selective use of the data supports this claim. My concerns regarding the use of the data are twofold.

First, in its review, the CMC consulted the following sources of data: QPS data, courts data, 24 written submissions (three of which were written by branches of QPS) and the **narratives of 354 police officers ('qualitative police data')**. These police narratives were relied upon by the CMC in reaching the conclusions it did, despite the fact that these accounts provide a heavily biased perspective. No attempt was made by the CMC to engage with those who have been charged with public nuisance, or with the vulnerable groups most often targeted in public nuisance policing. This approach seems unduly skewed towards the views of police officers.

Second, the CMC restricted its analysis to a comparison between the 12 months prior to the introduction of the offence and the 12 months subsequent to the introduction of the offence. It then went on to conclude that any changes that were observed between these two periods were attributable to something other than the introduction of the new offence. The CMC stated that the statistically significant increase in prosecutions that was observed during the two year period under consideration was merely reflective of a general 'upward trend' in the number of public nuisance incidents over the past decade, averaging around 7% per year. However, averaging out this 'trend' masks the fact that, according to their own figures (relegated to an appendix), the rate of increase in public nuisance incidents doubled after the new offence was introduced: the increase between 1997/98 and 2003/04 (a six year period) was 36%, while the increase between 2003/04 and 2006/07 (a three year period) was 38%. Further, by restricting its investigation to a comparison between the year before and the year after the introduction of the offence, the CMC was able to avoid acknowledging that, according to figures released by QPS, there was a 19% increase in good order offending (of which public nuisance is the primary sub-category) in the first six months of 2006 alone. This would suggest something of a 'marked' change, despite the CMC's findings to the contrary.

This selective use of the data would seem to suggest an outcome-oriented approach, supportive of both the offence and the manner of its use by police officers.

In my research, I have observed that there is a general sense of mistrust amongst vulnerable people towards the CMC, and a belief that the CMC is not sufficiently independent of QPS to act as an effective overseer of the operations of the police service. I have also observed that there is a feeling amongst many community lawyers that despite the many reviews undertaken by the CMC with regard to the policing of marginalised people, the situation has not improved. This generates a general sense of frustration with and distrust of the CMC's review processes.

Thank you for the opportunity to contribute to the review, and please do not hesitate to contact me with any queries regarding this submission.

Yours sincerely,

Dr Tamara Walsh

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