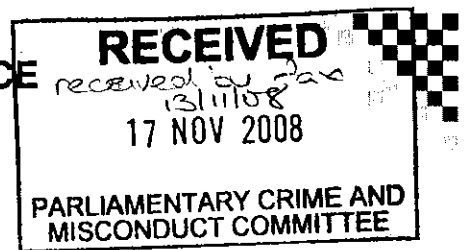




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Our Ref:

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PCMC Ref: 11.1.4
COP Ref: 08/39610

Mr Paul Hoolihan MP
Chairman
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hoolihan

THREE YEARLY REVIEW OF THE CRIME AND MISCONDUCT COMMISSION

I refer to your letter dated 18 September 2008 inviting submissions to assist the Parliamentary Crime and Misconduct Committee (PCMC) in conducting its three year review pursuant to section 292(f) of the *Crime and Misconduct Act 2001* (the Act).

The purpose of the Act and how such purpose is to be achieved is set out in ss. 4 and 5 respectively. The primary purpose of the Act as it relates to the Queensland Police Service (QPS) 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*.

The comments made in this submission are not designed to criticise the CMC, but to explore opportunities to improve the partnership between the agencies. It should also be noted that the Service has contributed previously to similar reviews of the CMC by the PCMC.

The following comments are provided by the Queensland Police Service (QPS) for your consideration.

The QPS and CMC formal relationship

As the Commissioner of Police, I am responsible pursuant to Section 4.8 of the *Police Service Administration Act 1990*, for the efficient and proper administration, management and functioning of the Police Service, including the discipline of members of the Service.

Under Section 4.10 of the *Police Service Administration Act 1990*, I have delegated these powers, functions and duties under *Chapter 2, Part 3* of the Act relating to

discipline to the Assistant Commissioner, Ethical Standards Command (ESC). Accordingly, the Assistant Commissioner ESC can direct members on any matters of discipline or complaint against a member and is the central point of liaison between the CMC and the Service.

The CMC may refer misconduct matters to the Service to be dealt with as the CMC directs. All matters of misconduct (which includes police misconduct and official misconduct) must be overviewed by the ESC before any action is taken. The ESC and CMC audit and review how complaints, regardless of their classification, are dealt with. Breaches of discipline are the responsibility of the Regions/Commands and Directorates and are dealt with and finalised at the local/regional level and only the outcomes of those complaints are recorded at ESC.

Upon an assessment of the seriousness of the conduct alleged, the CMC may return the matter to the Service for investigation or investigate the matter itself. Throughout the 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.

A trend over time is increased referral to the Service. In the recent past, such matters would have been dealt with by the CMC or alternatively been undertaken cooperatively between the QPS and CMC. The Service takes this trend as increased confidence in the QPS by the CMC to deal with matters professionally and appropriately.

The Internal Investigations Branch (IIB) of ESC is responsible for the investigation of allegations of criminal conduct and misconduct by members of the Service. It also has a role to actively over view and, in selected cases, investigate the circumstances surrounding particular Police Related Incidents outlined in Section 1.17 of the Operational Procedures Manual relating to 'Fatalities or serious injuries resulting from incidents involving members (Police related incidents)'. IIB also undertakes investigations into other matters as directed by myself or the Assistant Commissioner, ESC.

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

ESC have ongoing regular meetings with the CMC at both Assistant Commissioner and managerial level. The Assistant Commissioner, ESC meets weekly with the Assistant Commissioner, Misconduct, CMC. Managerial meetings involving QPS and CMC liaison officers, known as the Joint Assessment Committee (JAC) meet weekly or more often if required. In such meetings, individual complaints, investigations and cases are discussed, assessed and progress reports provided. This provides a forum for the case management of complaints between the QPS and CMC.

In terms of complaint management and the CMC's over viewing role, I make the following observations and comments:

Although ESC and CMC maintain regular liaison regarding complaints, ESC managers and regional Assistant Commissioners have experienced delays in matters raised at the CMC not being assessed and forwarded to the Service in a timely manner. Concerned parties are being interviewed by police some weeks after making the initial complaint to the CMC. Delay in contacting concerned parties can reflect negatively on the Service and public confidence in the process.

ESC managers have raised concerns regarding some matters referred by the CMC to the QPS, in particular material supplied by the complainant to the CMC often does not accompany the referral. The CMC have provided advice to ESC that in some cases this is due to privacy issues, however, this hinders the QPS investigation process. There is scope to improve communication between agencies to commence investigations, inquiries and reviews in a timelier manner.

The QPS and CMC both utilise computer systems to accurately record the number of complaints made against the Service. ESC and regional police have experienced a tendency by the CMC to over evaluate complaints at the initial assessment stage. The effect of this can increase the allegation count, lead to multiple allegations and often duplicates assessments (i.e. same incident from more than one complainant/informant/notifier will generate multiple complaint reports and allegations). Similarly there is a tendency by the CMC to assess complaints collectively as official misconduct pursuant to the *Act*. The CMC also assess matters and classify complaints and allegations at the highest possible level, as opposed to a level based on the known or likely facts. In such situations, this has the effect of over inflating the seriousness of the allegations.

The QPS Client Service System (CSS) records client service issues, complaints and favourable comments and is used to provide statistics for the QPS Annual Report and Operational Performance Reviews of police Regions throughout Queensland. It is imperative that CSS accurately reflects the actual number of complaints, the classification of the complaint and the number of allegations made against members of the Service. Naturally, any change in the manner of recording complaints can make comparisons difficult to monitor over time.

As an opportunity for future collaboration, the Service would benefit from CMC investigators providing a formal investigation report for matters that are sent to the Service for the purpose of any discipline proceedings. The formal investigation report would provide the Service with details of the complaint, subject members, investigation summary, findings, recommendations and appendices. Given the demands on officers' time and the frequency of such matters, it is hoped that the Service and the CMC can develop a complimentary reporting format.

The standard of investigations conducted by the QPS is satisfactory for criminal standards; however, there are times where the CMC have a higher expectation of the Service concerning the extent of investigations reasonably necessary. This places unrealistic and unjustifiable use of resources to meet such standards, particularly where more and more investigations are being returned to the Service.

Devolution of responsibility for prevention of, and dealing with misconduct

The most significant change regarding dealing with misconduct and the complaint management process currently facing the QPS and CMC is Project Verity. It is a joint CMC and QPS project designed to improve complaint management within the QPS by devolving complaints management to District Officers (DO) and Officers in Charge (OIC). The project is currently being trialled in North Coast Region and Metropolitan North Region.

The steering committee for Project Verity consists of joint CMC and QPS staff including Assistant Commissioner Misconduct (CMC), Director Witness Protection and Operations Support (CMC), Director Complaints Services (CMC), Assistant Commissioner ESC, Chief Superintendent ESC, Manager Ethical Practice Branch ESC.

Project Verity encompasses four specific initiatives including the following:

- the Devolution project which aims to develop a viable and effective framework for enhancing local managerial responsibility for complaints management within the QPS, supported by an appropriate monitoring framework incorporating the monitoring roles of the QPS and CMC;
- the Disciplinary Process and Sanctions project which will examine possible enhancements to aspects of the disciplinary process with a view to more timely and appropriate disciplinary outcomes. This will include an examination of possible alternatives to the disciplinary hearings process and the appropriateness of various sanctions available within the process.
- a review of s.18 of the Human Resource Management Manual (HRMM) dealing with complaint management and the disciplinary process with regard to the outcomes of the devolution and discipline and sanctions projects. There may also be recommendations for amendments to relevant legislation, including the *Crime and Misconduct Act 2001* and the *Police Service Administration Act 1990* and regulations, and other relevant policies; and
- Project Ice – an integrity scan of the QPS with a view to developing a proactive integrity model for consideration.

The project requires the QPS to implement considerable change in relation to how the QPS manages complaints (devolving responsibility for the management of complaints to the OIC level), including significant information technology enhancements in order to provide an IT solution for Project Verity.

The project, although challenging to both organisations, has been developed in a spirit of co-operation and a sense of common purpose. The relationship between the QPS and CMC in this aspect has been, and continues to be professional and productive. Implementation has been conducted in an atmosphere of cohesion and co-operation, with both agencies involved in the development of practical solutions, training/awareness, monitoring and evaluation.

The CMC's lead role in building the capacity of the public sector, including QPS, 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 has no comment at this time to make with respect of 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 reflect the work that has been done in that regard over time.

Ethical Practice Branch, ESC has worked in conjunction with the CMC to develop the QPS Corruption Prevention Plan 2007 – 2008 and associated training for staff. The purpose of the plan is to ensure the QPS remains a corruption resistant organisation by establishing a framework that promotes a culture of professionalism and integrity.

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

The relationship between State Crime Operations Command (SCOC) and the CMC Crime Division is open, professional and mutually beneficial. The Assistant Commissioner Crime and the Detective Chief Superintendents from both agencies meet monthly as the *Joint Executive Team* (JET) to discuss current and emerging

issues impacting on both agencies. In addition, the Detective Chief Superintendent CMC is a permanent member of the *Operations Management Board* (OMB) where all SCOC covert operations are evaluated, approved, and monitored.

SCOC and QPS regional police, regularly seek the use of CMC coercive powers including, principally, investigative hearings. This is usually done to overcome the stalling of historical major and/or organised crime investigations by individuals who choose not to co-operate with police inquiries and who are likely to possess important information.

These hearings have, in the main, proved to be extremely valuable in progressing these investigations and have resulted in a range of beneficial outcomes including significant criminal arrests, confirmation on oath of the evidence able to be given by prospective prosecution witnesses, charges of perjury for non-compliant individuals, and expediting the timely conclusion of protracted/historical coronial matters. Hearings are now being requested, and held, at much earlier stages of investigations as investigators better understand their tactical and strategic value.

The CMC has been responsive to the needs of the QPS in prioritising both the timing and location of investigative hearings to maximise operational outcomes. In rare cases this has included extraordinary 'emergent' hearings conducted out-of-hours at very short notice.

Increased understanding of the investigative hearings process across the QPS and their demonstrated success has resulted in a significant increase in requests to the CMC. This has led to necessary prioritisation of requests and some significant delays in scheduling hearings. To date, this has not resulted in any significant operational or prosecutorial detriment, however, with requests for hearings likely to continue to escalate an increase in relevant capacity within CMC would be of significant benefit to the QPS.

In the future telephone interception-driven environment, both QPS and CMC will gain a greater understanding of the membership, scope and methodologies of organised criminal enterprises. It is highly likely that law enforcement will leverage off this clearer 'window' into the organised crime milieu by using the investigative hearing capability to gain an even more comprehensive understanding of crime markets. This expanded operational and intelligence focus will inevitably also increase existing demands on the investigative hearings capability.

The CMC and QPS continue to engage in joint operations in appropriate circumstances in the areas of organised crime and paedophilia. Joint operations such as Submission/Barrier have been highly successful and demonstrate the effectiveness of shared resourcing and access to CMC coercive powers.

In the area of paedophile investigations a greater level of co-operation is being achieved in determining the menu of work to be pursued by each agency. This has resulted in a more effective and co-ordinated targeting strategy and use of the investigative hearing power.

The CMC makes available its physical and technical surveillance assets and specialist civilian staff including intelligence and financial analysts on request to SCOC whenever possible. This support includes requests at short notice, occasionally in urgent/emergent circumstances, which may require CMC operations to be temporarily deferred.

The important work of the CMC in terms of the seizure and forfeiture of assets obtained through criminal activity is acknowledged, supported and appreciated. The QPS view is that, in relation to the illegal drug trade particularly, this work is very beneficial. The QPS would support any request or application by the CMC for additional resources in this area.

The sharing of information and intelligence holdings between SCOC and the CMC in relation to crime issues is open. Both agencies are involved in producing a range of valuable intelligence assessments of mutual interest concerning crime markets, groups and methodologies. This menu of work is divided consensually and CMC products are produced and disseminated in consultation with SCOC and Regions as appropriate to the subject matter.

The CMC's research role

The research arm of the CMC conducts important research to support the CMC's key strategic goals to prevent and combat crime, to promote high standards of integrity and reduce misconduct in the public sector and to provide an effective witness protection service. The CMC Research Unit also conducts research in the area of policing methods and services, and are sometimes called on to explore and report on public policy issues.

The CMC research unit have worked collaboratively with the QPS Review and Evaluation Unit. The ability for the CMC and the QPS to undertake collaborative research projects is important as it provides opportunity for additional resources, sharing of information, increased independence and therefore public confidence in the outcome of police projects.

The QPS and CMC have worked on several collaborative research and evaluation projects over the past year. There has been occasions where there has been some lack of clear communication, understanding and agreement in relation to the role of both agencies that has resulted in disagreements over conclusions and delays in the finalisation of reports including the Safety Hood Trial, the Taser Trial, and Project Verity.

Out of such situations is an opportunity to enhance the relationship between the CMC and QPS by holding regular meetings to ensure that each entity is appropriately aware and engaged in respect of current projects, issues and matters of interest.

The Review and Evaluation Unit also provides research and administrative support to the QPS Research Committee. A key role of the Research Committee is to deal with requests by external researchers to undertake significant research that impacts upon the Service.

The CMC's witness protection function

The QPS Internal Witness Support Unit, ESC has continued to work in conjunction with the CMC to provide guidance and professional support for the QPS members who report instances of alleged misconduct by other members of the QPS. The Service does not have further comment to make on this issue

Corporate governance issues

The Service is satisfied with the corporate governance in place in the CMC and is confident 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.

Although no recent examples can be provided, there has been an issue of concern where the CMC has not complied with what is widely referred to in administration law as the 'hearing rule' prior to releasing reports that are relevant to or contain comments regarding policing matters. The Service has previously reported on this issue at the previous PCMC review in 2006.

The QPS has previously reported that 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. There are occasions where 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 media releases, and for sufficient time to analyse final reports prior to their release publicly. Such processes would improve the professional relationship between the QPS and CMC, and enhance the communities' confidence in the integrity of the police service.

The overall performance of the CMC

In summary, the Service has established and continues to maintain a 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 to achieve this end.

The Ethical Standards Command meets weekly with officers from the Commission where cases and issues of mutual interest are discussed. State Crime Operations Command meet monthly with the Commission to discuss current and emerging issues impacting on both agencies.

The 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.

The Ethical Standards Command continues to investigate and commence criminal prosecutions against members of the Service, supporting the QPS commitment to providing a corruption free service to the Queensland Community, based on honesty, integrity, fairness, equity, professionalism and accountability. There have been a number of well publicised cases where officers have been reported and or arrested by their colleagues for criminal and non-criminal offences, such as: drink driving,

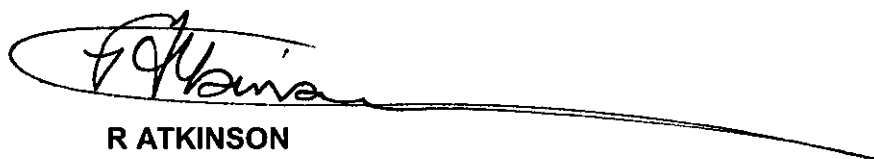
assault bodily harm, stealing, possessing child pornography, stalking, traffic matters, other summary offences and domestic violence matters. The Service is dedicated to ensuring all of its employees maintain professional and ethical behaviour, demonstrating the Services' commitment and ability to investigate their own staff.

There are other matters that concern me in relation to the QPS – CMC engagement in respect of the broader police behavioural/integrity arena and the status of the QPS in that regard. I am hopeful that these matters and the issues raised in this submission can all be resolved through ongoing liaison and positive communication between the CMC and QPS.

I trust that this information is of assistance to the committee's review and thank the Committee for allowing the Service the opportunity to provide a submission as part of your review. I would also like to reserve the right to provide additional submissions to the PCMC if necessary at a future time.

Please do not hesitate to contact myself or the Assistant Commissioner Ethical Standards Command, telephone 3364 3727, should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R Atkinson', is written over a long, thin horizontal line that extends across the page.

R ATKINSON
COMMISSIONER