

# Queensland Police Union of Employees

217 North Quay, Brisbane, Qld 4000. Telephone (07) 3259 1900

ABN 75 781 631 327



Fax (07) 3259 1950

Email [police@qpu.asn.au](mailto:police@qpu.asn.au)

15 July 2011

The Research Director  
Parliamentary Crime and Misconduct Committee  
Parliament House  
George Street  
Brisbane 4000

Dear Director

## **Re: Review of the Crime and Misconduct Act**

Please find attached the Queensland Police Union of Employees' ("QPUE") submission to the review of the *Crime and Misconduct Act 2001*.

The QPUE is firmly of the view a committee based examination process involving all relevant stakeholders is necessary for the review of this Act. Such a review, at the very least, should include representatives from the Law Society, the Council for Civil Liberties, the Queensland Police Service and the QPUE. The sole use of written submissions is completely inappropriate given the invasive, compulsive and secretive powers provided to the Crime and Misconduct Commission ("CMC").

In any event, the QPUE calls for the full public disclosure of, and a right of reply to, any legislative amendments proposed by the CMC. The QPUE believes any proposed amendments should also be subject to consideration and debate by a committee of relevant stakeholders.

I am available on 3259 1900 should you wish to discuss any of the matters raised.

Yours Sincerely

**Ian Leavers**  
**General President**

## **Queensland Police Union of Employees Submission Three Year Review of the Crime and Misconduct Act**

The *Crime and Misconduct Act 2001* (“CM Act”) provides for the establishment and operation of the Crime and Misconduct Commission (“CMC”).

The CMC is arguably the most powerful public body in Queensland, with extensive powers to coerce individuals to provide information and evidence, under penalty of perjury, and in secret. Its powers extend to overriding basic civil rights such as the right against self incrimination, and can be exercised in the investigation of conduct which does not amount to criminal offences. It has often been described by Queensland Premiers as a standing Royal Commission.

### **The Need for Comprehensive Review**

The Queensland Police Union of Employees (“QPUE”) believes a comprehensive review of the CM Act must be conducted, involving all relevant stakeholders. A process similar to that undertaken by the Queensland Government in the recent review of the *Police Powers and Responsibilities Act 2000* (“PPRA”) is necessary to ensure the right balance is struck between the need for invasive powers and the protection of civil rights and community freedoms.

At the very least, the QPUE joins with other stakeholders such as the Council for Civil Liberties, in calling for a comprehensive review of any additional powers or legislative amendments sought by the CMC prior to their adoption by the Government. Again, such a review should involve all relevant stakeholders, and be conducted in a similar manner to that of the PPRA.

An appropriate and comprehensive review of the CMC and its governing legislation is an essential ingredient in the preservation of open, transparent and democratic government in Queensland. Being the only Australian State without the protection of an Upper House, the robust review and public discussion of Government policy is essential.

## **The CMC's Functions**

The CMC has three primary functions; investigation of organised crime and paedophilia, investigation and prevention of misconduct, and the provision of witness protection services. Additional functions include the provision of research and intelligence.

The CMC exists as a result of the combining of the Queensland Crime Commission and the Criminal Justice Commission ("CJC") on 1 January 2002. Its predecessor, the CJC, was established as a result of recommendations made by the Fitzgerald Inquiry.

### The Crime Function

The Queensland Police Service ("QPS") is also responsible for the investigation of serious and organised criminal conduct, and, unlike the CMC, has the experience and expertise to conduct criminal investigations. This is demonstrated by the fact the QPS has seconded a large contingent of sworn police officers to the CMC in order for it to perform its crime function.

Interestingly, the CM Act itself vests command of those officers jointly with the highest ranking police officer attached to the CMC and the Chairperson. The QPUE believes the secondment of these officers for performance of the crime function is an inappropriate duplication of resources and a waste of public funding.

With the exception of the CMC's authority to conduct exercise compulsive powers, and the creation of an offence for providing false or misleading information to the CMC, QPS officers have the same powers of investigation.

It is the QPUE's view the crime function should be transferred to the QPS, which is better experienced in the conduct of complex criminal investigations. The QPUE believes there is a need for a power to conduct compulsive hearings in relation to serious crime and paedophilia. The exercise of such a power could be authorised by the Controlled Operations Committee, of which the CMC Chair is a member, in appropriate cases. This would reflect a better use of police resources and centralise the investigation of serious organised crime with the police.

At present, for example, both the QPS and the CMC have squads/units targeting Outlaw Motorcycle Gangs, Internet Paedophilia and engage in the conduct of joint operations with other investigative bodies including NSW Police, the Australian Crime Commission and the Australian Federal Police. Such duplication is simply a waste of limited resources.

One of the outcomes of the Fitzgerald Inquiry was that officers vested with special responsibilities, and particularly those dealing with organised criminal elements, were more susceptible to engaging in corrupt or unethical practices. The people charged with keeping Queensland corruption free also hold responsibility for the crime function. Complaints about the exercise of compulsive and other powers in the performance of the crime function need to be overseen by an independent misconduct body – not an organisation responsible for both serious crime and misconduct investigation.

#### The Witness Protection Function

It is also the view of the QPUE the Witness Protection function should be transferred to the QPS. Again, this function is performed primarily by police officers seconded to the CMC. Initially, it was entrusted to the CJC in order to provide protection to witnesses who gave evidence against police officers following the Fitzgerald Inquiry.

Nationwide witness protection arrangements now exist. Should a situation arise where it is necessary to provide witness protection in circumstances where the person is threatened by a police officer, such person would most likely be provided protection outside of this jurisdiction.

Transferring the witness protection function to the QPS would not change this principle, and would ensure future witnesses were afforded the same level of protection as they currently are. In fact, should such a situation arise, provision could be made for the CMC itself to organise protection through cooperative arrangements with interstate and federal witness protection bodies, bypassing the QPS entirely.

### Removing the Crime and Witness Protection Function

The QPUE submits the removal of these two functions from the CMC and the vesting of them with the QPS would be a better use of public resources. It would also allow for the robust and on-going review of these functions by an independent anti-corruption and research body.

Should the CMC no longer be responsible for the performance of these functions, there is an increased likelihood the CMC will be positioned to make comprehensive recommendations on the operation and performance of these functions by the QPS. This would allow for a system which constantly improves itself and provides the best services to the Queensland community.

### The Misconduct Function

The QPUE fully supports the existence of an independent anti-corruption body and believes this, coupled with corruption prevention and associated research and intelligence gathering, should be the sole responsibility of the CMC.

Such a separation of investigative functions would be likely to enhance public confidence by ensuring an independent body existed to investigate the use of compulsive powers by crime investigators. At present, any such complaint involves the CMC investigating itself. Complaints to the Parliamentary Crime and Misconduct Committee, which has oversight for the CMC, are in fact referred back to the CMC for investigation, as the Committee has no investigative staff at its disposal.

Despite being critical of the time taken to conduct and finalise investigations, the QPUE supports the role the CMC has in relation to oversight, and conduct, of misconduct investigations. However, the QPUE is critical of how the CMC presently performs this role, and believes the existing mechanisms for dealing with substandard performance within the CMC's misconduct division are significantly wanting.

Substantial submissions in relation to the police discipline system, including the CMC's role in same, have already been made to the Queensland Government Review of the Police Discipline System ("the Discipline Review"). While technically falling within the terms of this review, the QPUE believes reform of the discipline process is best left to the Discipline Review, rather than to have parallel reviews conducted on the same topics. Despite this, the QPUE attaches a copy of its submissions to the earlier review for the information of the Committee.

### **Maintaining Public Confidence in Units of Public Administration**

The CMC is required to promote public confidence in the integrity of units of public administration, and handle complaints of misconduct and corruption within the public sector. It is the QPUE's view the CMC, in recent times, has failed to responsibly perform these requirements.

Recently the CMC concluded Operation Tesco, which was an examination of alleged corrupt activities involving police on the Gold Coast. This operation involved the wide spread use of telephone intercepts, secret compulsive hearings, and finally a public hearing. The investigation ran for at least two years, and from early on, aspects of the investigation were leaked to the media.

Operation Tesco was originally touted as the next Fitzgerald Inquiry in Queensland, and was supposedly targeting drug trafficking and protection type rackets by Queensland Police. Such rumours and innuendo were allowed to publicly flourish, through the media, by the CMC. However, at the conclusion of the operation, the CMC admitted there was no systemic police corruption on the Gold Coast. Two junior police officers (both constables) were criminally charged. There were no charges of drug trafficking or supply, or release of confidential police information.

Allowing the continued publication of Fitzgerald style allegations of corruption, whilst clearly being aware of the true facts and evidence, hardly amounts to installing or promoting public confidence within the QPS.

One can only imagine the budget expended on an investigation which failed to produce any substantial results. The QPUE believes these same results could have been achieved through the use of standard investigative techniques, coupled with the use of directed discipline interviews, in a much more timely, and substantially more cost efficient manner. It is a pity the same resources were not used to investigate armed robberies and organised bikie related crime on the Gold Coast, which the QPUE believes would be a better use of public funds.

Similarly the recent trial of two detectives over allegations they attempted to pervert the course of justice while investigating a murder in Rockhampton again demonstrates the CMC's inability to appropriately perform its misconduct function. The charges against both detectives were dismissed following a no case submission.

The CMC's public stoush with the Police Commissioner arising out of its investigation into the investigation of the events surrounding a death on Palm Island is another example of the CMC blundering in its attempts to properly perform its functions. That matter ended with the Supreme Court upholding a claim of apprehended bias and critical comment of the Chairperson's directions to the Commissioner.

This matter followed on from the acquittal of a former police detective on charges of perjury arising from Operation Capri; an investigation into alleged corrupt practices within the Armed Robbery Squad.

In recent times, the CMC has been unable to prove at trial any criminal charge it has laid against a police officer or other public official. This is despite its access to compulsive powers, and its ability to require people to incriminate themselves under threat of contempt.

There have been similar investigations, coupled with prominent leaks to the media, involving local government councillors. Again, the allegations made have failed to survive the scrutiny of the Courts.

## **Media Reporting of On-Going Misconduct Investigations**

It would seem the CMC is good at making assertions in the media and potentially ruining people's reputations, but lacks the investigative ability to prove those assertions in a Court of law. Such individuals are further denied the ability to seek recompense as any investigative report is provided under Parliamentary Privilege, making the CMC immune from action for any defamatory imputations.

The QPUE, while supporting the misconduct function of the CMC, believes appropriate safeguards need to be introduced to protect the identity of individuals subject to such investigations until such investigations are finalised and criminal or official misconduct charges laid.

Any final report published by the CMC should be subject to a statutory requirement to completely de-identify any person mentioned in the report, unless the person consents to being identified, or the person is charged of a criminal offence or official misconduct. A right to pursue damages should exist where such de-identification is not sufficient.

The CM Act should include provisions which prohibit the publication of details of a misconduct investigation or hearing (other than a public hearing) until such time as the investigation is finalised. Further the identification of an individual who has not been convicted of a criminal offence or official misconduct (or subject to a disciplinary declaration) should be prohibited.

## **The Parliamentary Crime and Misconduct Commissioner**

The QPUE has concerns about the resourcing of the Parliamentary Crime and Misconduct Commissioner ("PCM Commissioner"). To the best of the QPUE's knowledge the PCM Commissioner is yet to take any disciplinary action against a member of the CMC for the inadequate or poor performance of their functions.

It is important the CMC be seen to be transparent and accountable in the performance of its functions. Complaints against the CMC must be robustly investigated, and should be subject to the same reporting requirements as exist for complaints against police officers, including the release of particulars of substantiated complaints to the public.

A major criticism of the PCM Commissioner is the restriction of the Commissioner's jurisdiction. The PCM Commissioner can only act in relation to matters referred by the Parliamentary Crime and Misconduct Committee and then only where there is bipartisan support for such referral.

The QPUE believes the PCM Commissioner should have an unfettered jurisdiction to investigate and audit the CMC in the performance of its functions.

## **Conclusion**

The QPUE believes it is important the CMC be seen to be accountable and beyond reproach. In order to promote ethical behaviour within the public sector, the CMC must set the example, through its conduct and that of its officers.

One means of enhancing public confidence in the CMC would be to adopt the calls by relevant stakeholders for a comprehensive review of the CM Act in a committee review style similar to that undertaken for the PPRA.

Again the QPUE emphasises, at the very least, a full review, involving all relevant stakeholders, must be undertaken prior to implementing any legislative amendments recommended by the CMC itself to the CM Act.