

Your Ref: Ms Sally Lohrisch

Our Ref: Criminal Law Section: 21000339/157

1 April 2011

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Dear Ms Lohrisch

## **INDEPENDENT REVIEW OF QUEENSLAND POLICE COMPLAINTS, DISCIPLINE AND MISCONDUCT SYSTEM**

Thank you for your letter received on 15 March 2011, inviting the Queensland Law Society to make comments on the Crime and Misconduct Commission's report, "Setting the Standard: a review of current processes for the management of police discipline and misconduct matters" (the CMC Report). This response has been compiled with the assistance of the Society's Criminal Law Section which is composed of expert legal practitioners who have a keen knowledge and awareness of the issues relevant to the matters raised in your letter.

You have requested us to consider Recommendation Three of the CMC Report which reads:

*The CMC recommends that the QPS, in consultation with the CMC, review the relevant policies and procedures, steps and processes in the current system for the management of police complaints and discipline with a view to:*

- a. reducing the level of complexity in the system*
- b. identifying clearer and simpler work flows for managing and dealing with misconduct and other inappropriate conduct*
- c. identifying and developing strategies to address potential choke points in the system caused by inadequate resourcing*
- d. identifying and assessing work-flow risks and articulating appropriate treatments*
- e. incorporating the recommendations made in the audit report (Appendix C) and giving officers adequate training in conducting preliminary inquiries and making assessment decisions about complaints 'interwoven with court'*
- f. putting timeframes on key steps in the process and linking these to appropriate consequences to ensure a timely conclusion of the matter*

Recommendation 3 is dealt with at the following pages of the Report, namely:

- XVI - XVII;
- 54 - 62; and
- Appendix C - Complaints assessed by the Queensland Police Service as 'interwoven with court' - page 129 - 146.

### **Delays at the assessment step**

At page 55 of the CMC Report it is noted that the delays at the assessment step are partially caused by the fact that if a misconduct complaint is first received at a local police station, the same assessment questions must be answered by the region in which the station is located, the ESC and the CMC.

While the CMC Report notes this duplication at the assessment step it does not propose a specific solution.

While the Society does not have expertise in bureaucratic management techniques, the suggestion is made that this multiple assessment procedure should be able to be simplified.

Whether that simplification is to be effected by cutting out assessment at the local police station and having the first assessment undertaken by the region in which the station is located is a matter for the Steering Committee.

The Society is attracted to deleting the first assessment step at local police stations where the complaint might first be received on the basis that assessment at that level is not objectively credible particularly if the complaint relates to an officer based at that local police station. The work and social bonds that exist at a local station does not promote credible objective assessment. It is the Society's view that any complaints received at a local police station should be immediately sent off for assessment by the Regional Office.

Further, it is surprising as noted at page 55 of the CMC Report that all complaints data received from the QPS has to be manually re-entered into the CMC's Compass system. It is surprising after 20 years of the CMC's oversight role of the QPS that there is no computer compatibility between the QPS complaints data system and that maintained by the CMC.

### **Delays at the inquiry step**

If the initial assessment step is to be moved from the local police station to the Regional Office, it follows that the Regional office should have dedicated staff who have received specialist training in relation to the investigation of complaints.

It is the Society's view that part of the problem of delays at the enquiry step is due to a lack of expertise held by officers who are tasked with investigating complaints against other police. While such expertise may exist at the level of Ethical Standards Command it would appear that the level of expertise at the Regional Office level is significantly diminished.

It is recommended that staff who are tasked to make enquiries into complaints at the Regional Office should receive specialist training and it should be part of the job description of a senior officer at the Regional Office to assess the timeliness of work being undertaken in relation to specific complaints at the Regional Office on an organised basis at least monthly.

### **Delays at the action step**

The CMC Report notes that delays at the “action to be taken” step are caused by a shortage of staff at the ESC Legal and Policy Unit or, in relation to penalty, because a matter moves back and forth between prescribed offices with different views on penalty.

The Society would support clear guidelines on indicative sanctions as suggested in the CMC Report at page 56. While the formulation of these indicative sanctions should be as a result of a joint exercise between the CMC and the QPS, it is the Society’s view that the actual formulation of the indicative sanctions should be the actual responsibility of the CMC itself both because of the CMC’s overarching role in monitoring discipline and related matters within the QPS and also because of the greater objectivity of the CMC and resultant credibility in the indicative sanctions being decided by the oversight body as opposed to the QPS itself.

The Society is not sufficiently aware of the day to day operations of the ESC Legal and Policy Unit but notes the CMC’s comment that there are too few people within this Unit required to consider too many matters. It follows that if this is causing a “choke point in the system”<sup>1</sup> more appropriately qualified staff need to be appointed to this Unit.

The Society also supports the CMC’s recommendation of a centralised Assistant Commissioner’s role/office to oversee the QPS complaints system.

This centralised Assistant Commissioner’s role should be in conjunction with the creation of a Senior Officer position in each of the regions to ensure that within each Regional Office the timely investigation of complaints was given appropriate priority as well as having sufficiently skilled staff at the regional office appointed to carry out investigations into complaints.

It would be envisaged that a centralised Assistant Commissioner would regularly visit each of the Regional Offices to ensure that the delays that are currently endemic in the process of investigating the complaints is addressed.

### **The “interwoven with court” issue**

It is surprising that the December 2007 Report which appears at Appendix C of the CMC Report of December 2010 is now over three years old and “to date, the QPS has not fully incorporated these recommendations in its complaints management procedures.”<sup>2</sup>

It is an indictment of the current complaint system that in those cases in which the initial assessment decision in relation to a complaint was that it was “interwoven with court, that no follow up action was undertaken upon the conclusion of the relevant court proceedings.”<sup>3</sup>

Leaving it to a complainant to follow up a complaint at the end of court proceedings is totally unsatisfactory as often a complainant is worn out and disillusioned by that stage. There is a suspicion that some involved within the QPS in the complaints system actively hope that a complainant will become disillusioned and not bother following up a complaint.

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<sup>1</sup> See CMC Report page 56.

<sup>2</sup> See December 2010 CMC Report page 60.

<sup>3</sup> See Appendix C at page 132

### **The role of the prosecutor**

It is noted in Appendix C that it was recommended by the CMC that the Police Prosecutor should report comments or findings by a court to the Ethical Standards Command.

It is noted that as far back as 1977 the so-called Lucas Inquiry made the following recommendation:

- "...prosecutors should be asked to report to the Commissioner of Police any challenges to confessional material and **all allegations** of unlawful conduct towards accused persons by police officers together with short particulars of the case, and its outcome."<sup>4</sup>

It is the Society's view that this recommendation which to our knowledge has never been implemented should be imposed not only on Police Prosecutors but also on Crown Prosecutors.

This would not significantly add to the workload of Prosecutors in that, as envisaged in the recommendation, the allegations made in court of misconduct by a police officer could be the subject of a short form note which could be made by the Prosecutor at the end of a case and then sent off to the Ethical Standards Command.

The Society is also of the view that where a matter is inextricably interwoven with allegations in a court matter an investigation of those allegations should await determination of the court matter but there should be a positive obligation on a prosecutor to bring the outcome of the court matter to the attention of Ethical Standards Command so that ESC can then obtain a copy of the relevant transcript for the purpose of deciding what further action should be taken in the matter.

We would also observe that it is relatively rare for Magistrates or Judges to make comments about the behaviour of police officers unless those comments are central to a judicial officer's finding in a specific case.

Therefore, there must be an automatic referral back to the ESC once a court case is concluded of a matter that has been properly decided at assessment stage as being 'interwoven with court'.

### **Absence on extended sick leave**

It is surprising to read at pages 60 and 61 of the CMC 2010 Report that an officer under investigation can go off on sick leave for a considerable period of time and that that, effectively, can frustrate the complaints investigation process in respect of an allegation made against that officer.

There should be a requirement that an officer who has gone on sick leave should be the subject of independent psychiatric assessment so that if an officer is genuinely ill and therefore unable to participate in the resolution of a complaint that officer's individual position is protected.

Equally the assessment by a psychiatrist and in appropriate cases a physician should be mandatory after an officer is on sick leave for a short period of time in order to ensure that the sick leave process is not being exploited to prevent a complaint from being properly investigated.

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<sup>4</sup> See page 244 of the Report of Committee of Inquiry into the Enforcement of Criminal Law in Queensland - 29 April 1977, page 244 where the Commissioners were The Honourable Geoffrey Arthur George Lucas, a Judge of Supreme Court of Queensland, Desmond Sturgess, Barrister and Dynes Malcolm Becker, Chief Superintendent of Police (Retired).

## Conclusion

Much of what is outlined by the CMC in its 2010 Report dealing with Recommendation Three relates to staffing and related bureaucratic issues within the QPS. The Society is ill-equipped to comment on those sorts of internal issues.

However it is a matter of concern that Appendix C having been concluded in December 2007 and its attendant recommendations have not been fully implemented over three years later. As to why this is so should be a matter of enquiry in relation to the work of the steering committee.

In conclusion, it is the view of many of the Society's criminal defence members that the public credibility of the police complaints process especially in relation to matters which are fully investigated by the QPS itself has reached a low point if not equal with the lack of credibility of the complaints process at the time of the 1989 Fitzgerald Report and certainly considerably tending in that direction.

While it is noted that the other recommendations of the CMC Report of December 2010 are being considered the State Government Steering Committee should be aware of the widely held view among many criminal defence solicitors in Queensland that complaints investigated within the QPS appear to be frequently carried out so that an outcome is satisfactory to the officer complained against is obtained.

If you have any questions regarding the contents of this letter, please do not hesitate to contact Ms Binny De Saram, a Policy Solicitor with our office on (07) 3842 5885 or [b.desaram@qls.com.au](mailto:b.desaram@qls.com.au).

Kind regards

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**President**