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The Hon. Peter Russo, MP.  
Acting Chair  
Parliamentary Crime and Corruption Commission  
Parliament House  
George Street, BRISBANE, QLD, 4000

27<sup>th</sup> July 2015

**Attention:** The Hon. Peter Russo, MP, Acting Chair, Parliamentary Crime and  
Corruption Committee (at [pccc@parliament.qld.gov.au](mailto:pccc@parliament.qld.gov.au))

**ATSILS' (Qld) Ltd. Submission on the Review of the Crime and Corruption Commission Act  
2001**

**Preliminary Consideration: Our background for meaningful comment**

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (“ATSILS”) provides legal services to Aboriginal and Torres Strait Islander peoples throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education; and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). As an organisation which, for over four decades, has practised at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

Further, please note: It is important to bear in mind that this submission is not cast with the vast majority of police in mind; namely, those who perform a highly demanding role in often trying circumstances, with honour and integrity. For such individuals, this Review is to some extent (barring false complaints etc) relatively academic. Rather, our submissions are based upon our first-hand experiences and are aimed at that small percentage of serving police officers who tarnish the otherwise good name of the Police Service. Those who perform their duties in the true spirit of the Police Service [“With Honour We Serve”], deserve no less – as do the citizenry of Queensland (whether Indigenous or non-Indigenous).

### **Summary of our position**

There is a proven track record that a police disciplinary process whereby the police investigate other police, simply does not work. The reasons for this are in one sense academic, but the facts speak for themselves. Whatever changes are put into place, this fundamental flaw (at least for matters involving more serious complaints) must be addressed. Without such, community confidence in the Police Service will continue to wain and more importantly, police officers who have conduct issues which need to be addressed, will remain unaddressed. A short to medium term increase in the proper resourcing of accountability measures will bear enormous long term benefits (with costs decreasing over time once it is made clear that standards will be enforced and officers held to account).

### **History of the Crime and Corruption Commission (the starting point)**

The CMC was established on 1 January 2002 when the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) merged to form the new organisation. The CJC had been established by the *Criminal Justice Act 1989*, to help restore confidence in our public institutions after the revelations of the 1987 to 1989 Fitzgerald Inquiry into police corruption.

For several years, in addition to investigating police and public sector misconduct, the CJC worked with the police to investigate organised and major crime. In 1997 this crime function was taken over by the newly formed QCC, under the *Crime Commission Act 1997*. The QCC was also given the task of investigating paedophilia.

During 2001 the Queensland Government amalgamated these two commissions and formed a single body to investigate and guard against crime, misconduct and other wrong doing in the public sector – the CMC. The legislative framework was provided by the Crime and Misconduct Act 2001.

In July 2014 the legislation governing the Crime and Misconduct Commission was changed from the Crime and Misconduct Act 2001 to the Crime and Corruption Act 2001.

The agency's name changed to the Crime and Corruption Commission (CCC).

Some of the other key changes were:

- A new governance structure took effect with the Commission consisting of a full-time Chairman, full-time Chief Executive Officer, a part-time Deputy Chairman and two part-time Ordinary Commissioners.
- The Minister has to consult with the Parliamentary Crime and Corruption Committee (PCCC) before nominating a person for a role on the Commission. The PCCC may veto appointments.
- The Parliamentary Crime and Corruption Commissioner can commence own-motion investigations into the CCC.
- The Assistant Commissioner Crime and Assistant Commissioner Misconduct positions are now Senior Executive Officers and are no longer Governor-in-Council appointments.
- The Act provides for sessional commissioners to be appointed to assist with operations.
- The CCC corruption function receives and assesses complaints of corrupt conduct instead of official misconduct. Section 15 of the Crime and Corruption Act 2001 outlined a new definition of corrupt conduct.
- Public sector agencies have a higher reporting threshold and will only be required to notify the CCC when they reasonably suspect that a matter involves or may involve corrupt conduct.
- Public officials had to develop a policy in consultation with the CCC Chairman on how that official or public sector agency will deal with a complaint that may involve the public official. (See section 48A of Crime and Corruption Act 2001).

- Complaints to the CCC had to be made by way of a statutory declaration. The CCC can apply an exemption in exceptional circumstances. (See section 36 of the Crime and Corruption Act 2001).
- The CCC had a requirement to review all pre-existing matters that were under assessment or investigation under the CMC Act to ensure they fall within the new jurisdiction.
- The CCC began monitoring lower-level matters dealt with by public sector agencies by undertaking audits.
- The CCC issued new directions under Section 40 of the Crime and Corruption Act 2001 to public sector agencies to inform them what matters they should deal with immediately.

Today the CCC is a unique organisation, operating on three ‘fronts’ — combating major crime, raising public sector integrity and protecting witnesses.

These submissions will focus on the CCC’s role in raising public sector integrity, and in particular, its role in maintaining integrity in the Queensland Police Service (QPS) and the disciplining of Police Officers for more serious corrupt conduct.

### **Purpose and Functions of the CCC Act**

One of the purposes of the Act is to *‘to reduce the incidence of corruption in the public sector’* (section 4).

The Act’s purpose is achieved by, among other things, giving the Commission investigative powers, not ordinarily available to the police service; that will enable the commission to effectively investigate major crime and criminal organisations and their participants. Also, the Commission is to investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct. Further, the Commission has particular powers for confiscation related investigations for supporting its role under the Confiscation Act (section 5).

Thus the Commission has a general roving mandate to monitor and reduce misconduct in the Police Service, oversee investigations of misconduct by the Queensland Police Service and, a discretion to itself investigate cases of more serious corruption.

For all police complaints specifically, the Commission has a “monitoring” role. In this context, the Commission may issue advisory notes to the Police Service about the conduct of investigations by the Service and may ultimately decide to transfer a particular complaint to the Commission from the Police Service (section 47). (For other public service entities, the CCC only has a monitoring role for allegations of ‘corrupt conduct’ (section 48).

The commission may, under section 47 of the Act, issue advisory guidelines for the conduct of investigations by the Commissioner of Police into police misconduct; or review or audit the way the Commissioner of Police has dealt with police misconduct, in relation to either a particular complaint or a class of complaint; or assume responsibility for and complete an investigation by the Commissioner of Police into police misconduct. The Commissioner of Police must give the Commission reasonable help to undertake a review or audit or to assume responsibility for an investigation.

If the Commission assumes responsibility for an investigation, the Commissioner of Police must stop his or her investigation or any other action that might impede the investigation if directed to do so by the Commission.

The Commission also has a “preventative” function – the Commission performs the function by analysing the intelligence it gathers in support of its investigations into major crime; and analysing the results of its investigations and the information it gathers in performing its functions; and using information it gathers from any source in support of its prevention function; and providing information relevant to its prevention function to the general community; and ensuring that in performing all of its functions it has regard to its prevention function; and reporting on ways to prevent major crime.

In the performance of all of its functions, the CCC must perform those functions independently, impartially and fairly and have regard to the importance of the public interest (section 57).

### **Some Criticisms of the Current System**

The saga of dealing with police complaints pre-dates the Fitzgerald Inquiry. Complaints against the police were then dealt with by the Police Complaints Tribunal.

The Fitzgerald Inquiry exposed major problems with the danger of having police investigate police, and as a result, the Fitzgerald Report recommended the establishment of the Criminal Justice Commission, one of the responsibilities of which was to independently investigate complaints against the police.

This remained the situation until the CJC (thereafter the CMC) was finally successful in convincing government that the Commission was wasting precious time and resources getting bogged down with relatively minor complaints (service-wide).

Under the legislation at the time, from memory there was no discretion for the Commission to dispense with minor, frivolous or vexatious complaints.

Instead of making precautionary amendments dispensing with the voluminous complaints across the sector but reserving the investigation of police complaints to the Commission, the amendments redirected all complaints, including those against police, back to the line agency – in this case, the Police Service.

We have consistently expressed the view that police complaints should be investigated by the independent CMC, now the CCC (or some other alternative impartial Agency), as was the case before the amendments effectively provided that primary responsibility for such investigations should rest with the Police Commissioner.

We have been supported in this view by the Council for Civil Liberties' Mr R O'Regan (former Chair, CJC) and most recently, Mr W Carter (former Chair, CJC and Chair, two past Review Inquiries) among others.

There can be no doubt that the current investigatory system as such relates to Queensland police officers, is flawed and must be overhauled.

The objective of the devolution policy implemented under the *Crime and Corruption Act 2001* was to effect *quicker remedial* responses to complaints through police management taking responsibility. Implementation was flawed in essential respects because although the legal responsibilities and rationale moved to a capacity building intent for police to manage police conduct, the legislative and procedural complaints system itself remained an outdated and ineffectual dominant orthodoxy of discipline and punishment.

Public confidence was compromised by more '*police investigating police*'. Public trust was undermined by long legalistic processes for possible retribution that excluded admissions, apologies, individual and organisational learnings.

The Crime and Corruption Commission has expressed the view that problems with the system must be addressed to maintain public confidence that officers who do the wrong thing will be held to account.

The CMC as it then was, reviewed the Queensland Police Service's disciplinary system at the request of Attorney-General Cameron Dick in late 2009; and it recommended some major changes, including removing the power of top brass to suspend sanctions imposed for misconduct.

Under the current system, a disciplinary charge can be proved against an officer and a penalty of dismissal imposed. But the dismissal can be immediately suspended, meaning the officer retains his or her employment subject to certain performance requirements. Such stands in stark contrast to the manner in which other employees across the State are dealt with when found to have acted in a manner warranted dismissal. The public has every right to expect that servicing police officers should not be judged by a lower bar in terms of

acceptable conduct – if anything, given the amount of power bestowed upon police, it should be the exact opposite.

### **Overview of Current process of Investigation**

Under the *Crime and Corruption Act 2001*, the Crime and Corruption Commission (CMC) essentially investigates complaints of serious corrupt conduct, police misconduct, or cases involving the public interest.

The Act distinguishes between ‘police misconduct’ (questionable honesty or impartiality) and ‘corrupt conduct’ (criminal offences or sackable conduct), with the clear inference that the latter is more serious.

However, in relation to police in particular, the Act contains many specific provisions – some of which clearly imply that the very existence of an allegation of ‘misconduct’ simpliciter against a police officer is always deserving of some degree of scrutiny by the CCC.

“Police misconduct’ in the Schedule is defined as misconduct (other than corrupt conduct) by a police officer that:

- (a) *is disgraceful, improper or unbecoming of a police officer; or*
- (b) *shows unfitness to be or continue as a police officer; or*
- (c) *does not meet the standard of conduct the community reasonably expects of a police officer.*

However, while the CCC is kept informed and monitors all police complaints, it is the Police Commissioner who has primary responsibility for dealing with complaints about ‘police misconduct’ (section 41); unless the Police Commissioner considers that it is more appropriate for the CCC to conduct the investigation itself or for the Police Service in conjunction with the CCC to conduct the investigation (section 42(4)).



The CCC has primary responsibility for dealing with complaints of 'Corrupt conduct', (section 45); and monitoring how the Commissioner of Police deals with police misconduct (section 45 (2)).

However, the Commission does have power to refer even 'corrupt conduct' allegations to the Police Commissioner, but as noted above the CCC must be kept informed and is responsible for monitoring the way in which the Police Commissioner deals with the complaint (sections 42(5) and 45(2)).

Whenever it receives complaints against the police, the CCC has ultimate discretion to refer complaints back to the Police Service for investigation – not just complaints of lesser seriousness (referred to under the Act as 'police complaints') but disturbingly even in cases of 'corrupt conduct'. Admittedly though, the Commission does have over-arching responsibility to monitor all complaints against the police.

In deciding whether to refer the complaint back to the Police Service or undertake the investigation itself, the CCC is obliged to consider four Principles – cooperation, capacity building, devolution and the public interest (section 34).

In summary, from a practical point of view the CCC ordinarily only investigates complaints of corrupt conduct with a significant public interest component, with the bulk of complaints are referred back to the Police Service.

### **Changes to the Current System**

We have always maintained our general view in relation to the investigation of police complaints that we consider it inappropriate for police officers to investigate other officers against whom a complaint is made.

Furthermore, we are of the view that to require same also places the investigating officers in an invidious position – all the more so given the collegiate mind-set of the Queensland Police Service.

Although we consider that it is not necessarily in the public interest for an independent body outside of the Police Service to investigate every claim that a police officer's conduct and behaviour in law enforcement is questionable, we note that the first three principles that the CCC must consider when deciding whether to refer the matter back to the Police, most notably capacity building and devolution, seems to weigh in favour of referring complaints back to the Police Service.

The last principle – public interest considerations – in our view would weigh heavily in favour of the CCC investigating all complaints against the police (other than the most trivial matters).

Public interest in our view should always be the overarching principle governing the investigation of conduct of police officers. The community is entitled to expect that law enforcement officers are scrupulously 'clean' and their actions highly defensible. Not only must justice be done – but it must be seen to be done. This also raises the question as to what criteria are used by the Commission to determine the weight of 'public interest' in a particular case.

The stringency of requirements to satisfy natural justice principles exponentially increases as the seriousness of the matter under investigation increases. In our view, fundamental principles of natural justice should mandate, in the majority of cases, the investigation of complaints against police by an independent body like the CCC.

We additionally submit that inherently, questions of police integrity necessarily involve a matter of public interest. We submit that the situation of police officer complaints is a separate category from complaints against other public servants – and indeed the current Act certainly supports this contention, containing as it does separate and exclusive provisions in respect of complaints involving police.

A body totally independent of the police service - be it the CCC or otherwise, needs to be properly resourced so that this vital aspect of police accountability can be overseen. Such is also important in terms of police credibility – with long terms benefits for the enhanced reputation of the police service should such an overhaul be brought to fruition.

As outlined above, we acknowledge the often difficult tasks which police are called upon to fulfil. We are sure that the vast majority of police, being possessed of integrity and thus serving with honour and distinction, would support our view that the small percentage of the police force whose conduct seemingly brings shame to their colleagues - should be vetted out of the Service.

That will not happen without independent, external assessments of police conduct. It will also assist the "credibility gulf" that clearly exists in some quarters with respect to police accountability – if a system were put in place which clearly demonstrated that in no sense could it ever be seriously suggested that police in Queensland were "above the law".

We consider that the use of suspended sanctions in the QPS discipline system is problematic, as it removes the deterrent effect of the sanction and undermines public confidence in the system and the QPS.

We further support the proposal that a Police Commissioner should be given the power to sack officers in whom they had lost confidence, without engaging in a protracted disciplinary process.

We support the proposition that the CCC be given an increased monitoring role in relation to misconduct issues and a broader range of sanctions for police misconduct charges.

The QPS should also elevate complaints management to "core business" and ensure its Ethical Standards Command, which deals with complaints against police, is properly resourced.

We consider that it is of paramount importance that the QPS has the will and desire to hold its own members to account with a view to restoring public confidence in the system.

It is important that the police officers are treated fairly, and the disciplinary process should proceed as quickly as it reasonably can; ensuring there is a tough code of discipline that meets community standards.

## Complaints made by way of Statutory Declaration

Reports of suspected corrupt conduct to the CCC should be made by statutory declaration. This would help ensure that any complainant has sufficient reason to believe corrupt conduct has occurred (section 36).

However, a person can claim an exemption under exceptional circumstances if any of the following adversely affects the person's ability to make their complaint by a statutory declaration:

- fear retaliation (reprisal or detriment) in relation to their employment, property, personal safety or wellbeing
- are illiterate, or not literate in English
- have a disability or impairment
- have a personal or physical disadvantage
- are in a remote geographical location (e.g. you are unable to access appropriate signatories for a statutory declaration)
- are a child (under 18 years).

There are also some circumstances where a person may report corruption to the CCC without a statutory declaration -

1. Exceptional circumstances. In specific exceptional circumstances, you may claim an exemption from reporting corruption via a statutory declaration. Claim an exemption under exceptional circumstances.
2. Public interest disclosure. If you are a public interest discloser, you are not required to use a statutory declaration to report corruption. Make a public interest disclosure.
3. Notification by public officials. Public officials who have a reasonable suspicion of corrupt conduct must notify the CCC (in accordance with ss. 38 and 40 of the Crime and Corruption Act 2001), but are not required to complete a statutory declaration.
4. Provide information. If you choose to provide information about suspected corruption without a statutory declaration, the CCC may consider your information but may not be able to deal with your concerns.

The Explanatory Notes to the 1 July 2014 amendments to the Act states that:

*“Commission’s new complaints management system Callinan / Aroney were of the view the commission’s focus should be on investigating serious cases of corrupt conduct. In addition to changing the definition of ‘official misconduct, Callinan / Aroney also recommended a number of other strategies designed to reduce the number of complaints the commission has to deal with.*

*Consistent with the goal to reduce the number of matters referred to, and investigated by the commission, the Bill:*

- 1. raises the threshold of when public officials are to notify the commission of corrupt conduct so that notification is only required when the public official reasonably suspects corrupt conduct (this is being done by amendment to section 38, which currently only requires the public official to suspect the conduct involves or may involve official misconduct);*
- 2. expands the use of section 40 directions issued to units of public administration to ensure only the more serious corrupt conduct matters will be referred to the commission. Directions under section 40 will now also include what complaints need or need not be notified to the commission as well as when and how complaints are to be notified to the commission;*
- 3. requires the commission must only investigate the more serious cases of corrupt conduct (amendments to sections 5 and 35);*
- 4. expands the grounds upon which the commission may dismiss or take no action in relation to a complaint to also include when the complaint is: not made in good faith; made for a mischievous purpose; made recklessly or maliciously; not within the commission’s jurisdiction; not in the public interest or has been dealt with by another entity (amendment to section 46(2)(g)); and*
- 5. enlarges the grounds upon which the commission may prosecute a person in relation to making a complaint that is: vexatious; not made in good faith; made for a mischievous purpose; or made recklessly or maliciously (new section 216A).”*

The Explanatory Notes states that the purpose of this amendment was to ensure complaints are made for genuine purposes.

Prior to the 1 July 2014 amendments to the Act, the majority of complaints made against Police Officers or other public sector officials, which in ATSIILS case was primarily Queensland Corrective Service's Officers, the complaints were sent directly to the then CMC.

However, since the amendments, most complaints against Police Officers are now sent to the Ethical Standards Command, QPS, Professional Practices Managers, QPS, or Officers in Charge of Police Stations for less serious complaints involving customer service issues, such as rudeness or delays.

Complaints against Queensland Corrective Service's Officers are now sent to the Ethical Standards Unit, Justice and Attorney General, who now administer the Corrective Services Act 2006.

We believe that the vast majority of our clients are inclined to make complaints that are in good faith, are not made for a mischievous purpose, nor made recklessly or maliciously; and we do not wish to expose our clients to possible prosecution for making a complaint; as this could have the effect of discouraging our clients from making a legitimate complaint due to fear of prosecution.

**Case Example: Assistant Police Commissioner Kathy Rynder's Decision not to discipline the six Police Officers investigating Senior Sergeant Hurley**

On 18 January 2010, the then Police Commissioner wrote to the then acting Chairperson of the CMC, providing relatively extensive comment on the CMC Review and that "The (QPS) supports the IRT review process, including the spirit and intent of the officer's findings."

On 4 May 2010 at Townsville, the Deputy Chief Magistrate, Brian Hine delivered his findings in the third inquest held into the death in police custody of Mulrunji and noted that Mulrunji died of fatal injuries which resulted from some force to the abdomen of the deceased either accidentally as the deceased and Hurley fell into the Palm Island Watch House or by deliberate actions of Hurley in the few seconds after they landed, but it was not possible to ascertain whether the force was deliberately inflicted or accidentally suffered. The four fractured ribs, liver laceration and portal vein rupture occurred as a result of this single injury.

As to the conduct of the investigating police he found:

The investigation's appearance of impartiality was further undermined by the following conduct:-

- It was inappropriate for Hurley to meet the investigating officers at the airport upon their arrival;
- It was inappropriate for Hurley to drive the investigators to the scene of Mulrunji's arrest; and
- It was completely unacceptable for investigators to eat dinner at Hurley's house while the investigation was being conducted.

The discussion by Senior Sergeant Hurley of the death of Mulrunji with Sergeant Leafé and Police Liaison Officer Bengaroo prior to being interviewed was inappropriate and contrary to the QPS Operational Procedures Manual. It had the potential to undermine the integrity of the investigation and undermine the appearance of integrity of the investigation."

In June 2010 the CMC, as it then was, released a 216 page report into the police investigations. This found that both the initial police investigation and the subsequent internal police review were seriously flawed, and that the conduct of the officers involved warranted consideration of disciplinary proceedings for misconduct.

Chapter 13 included a discussion of the QPS Report. It stated that the CMC could have no confidence in the integrity of the conclusions and recommendations from that report. It also stated the following:

*"Contrary to the view expressed by the Commissioner of Police, the CMC considers that the conduct of the members of the IRT is sufficiently serious to warrant consideration of disciplinary proceedings."*

The CMC Review also noted that the IRT gave detailed regular briefings about the investigation to the Commissioner of Police, who fully supported the findings of the IRT. There followed extensive critical comment of the conduct and findings of the members of

the IRT. A recommendation was made that the QPS give consideration to disciplinary proceedings against the members of the IRT.

The CMC report concluded:

“In September 2006, the Acting State Coroner stated at page 11 of her Inquest findings:

*“The response by senior police officers to this inquest should be cause for some reflection. There was little acknowledgement that the investigation by the police was deficient. Clear directives from the Police Commissioner and a commitment to ensure proper standards of investigation are required to restore public confidence.”*

*“The CMC looks to the Commissioner of Police to acknowledge the unacceptable conduct of the members of the initial QPS investigation team and the flawed Palm Island Review and now take appropriate action to restore the confidence of the public, and of its own members, in the Service.”*

By way of summary there were 16 allegations against 4 officers involved, and below is a summary of the allegations leveled at the Investigation Review Team:

- (a) Failing to hold officers accountable
- (b) Justifying inappropriate conduct
- (c) Suggesting explanations for the officers’ conduct not advanced by the officers themselves
- (d) Asking a series of questions intended to elicit a specific desired response
- (e) Asking questions which create a perception of bias
- (f) Accepting evidence without testing it
- (g) Lack of thoroughness
- (h) Lack of diligence
- (i) Inadequacy of their findings in relation to the conduct of the investigating officers.

On 6 July 2010 the one of the police officers made application to the Supreme Court for an interim injunction against the Police Commissioner from responding to the CMC.

On 19 August 2010 *Kitching & Anor v. Queensland Commissioner of Police & Ors* [2010] QSC 303 (19 August 2010) Justice P Lyons refused injunctions against the Police Commissioner



from determining the disciplinary actions and declaratory relief and an injunction restraining the Chairman of the CMC from participating in any decision by the CMC about assuming responsibility and completing the investigation of the Queensland Police Services Palm Island Review and/or prosecuting the first and second applicants for official misconduct in the Queensland Civil and Administration Tribunal (QCAT).

Extraordinarily, on 11 January 2011 QPS Deputy Commissioner Kathy Rynders sent a report of over 400 pages to the CMC stating that she would not initiate disciplinary proceedings against the officers.

Her penultimate conclusion set out in paragraph 652 was as follows:

*“I have considered the actions of the IRT in preparing their report on the instructions of the Commissioner. Their report is not perfect. I am of the opinion that the members of the IRT undertook their duties conscientiously and competently. I do not accept the CMC Review view that there is evidence supporting either disciplinary proceedings or official misconduct. Consequently, I do not propose to take any action against the members of the IRT.”*

The CMC stated that it had no power to request the Queensland Civil and Administrative Tribunal (QCAT) to conduct an independent review of this decision.

On 14 March 2011 the CMC wrote to the QPS expressing disagreement and disappointment observing there was no legislative power to review the decision of QPS Deputy Commissioner Rynders to take no action and not initiate disciplinary proceedings under the provisions of Part 7A of the *Police Service Administration Act 1990*. **Note: our analysis of current legislation cross-referenced against recent feedback from the CCC suggests such is still the case – such needs to be addressed.**

On 15 March 2011 Deputy Commissioner Rynders report was released and CMC Chairperson Martin Moynihan QC AO issued a public response condemning QPS Deputy Commissioner Rynders' report.

As a result of the Palm Island investigations, the CMC announced that it would now only:

- seek changes to the law, and
- review the current draft Memorandum of Understanding into police-related deaths in custody.

Deputy Police Commissioner Kathy Rynders found that six police officers should not be disciplined over botched probes into the Palm Island death in custody, and should only face "managerial guidance".

We were extremely disappointed in this ruling, which flew in the face of a Crime and Misconduct Commission (CMC) recommendation that the officers face disciplinary action and misconduct charges over two flawed investigations into Palm Island man Mulrunji's Watch House death in November 2004.

The CMC expressed the view that it was powerless to challenge Ms Rynders' decision because of a legal loophole.

### **The Queensland Civil and Administrative Tribunal**

The Queensland Civil and Administrative Tribunal (QCAT) is an independent body which, among other functions, has the jurisdiction to hear disciplinary proceedings for official misconduct.

Section 219A of the Crime and Misconduct Act states that the provision for such disciplinary proceedings in QCAT is to:

- protect the public; and
- uphold ethical standards within public sector agencies and the police service; and
- promote and maintain public confidence in the public sector.

### **The QPS discipline process**

The CMC may recommend to the QPS that it consider taking disciplinary proceedings either for police misconduct or official misconduct.

***Police misconduct*** is conduct that:

- is disgraceful, improper or unbecoming an officer; or

- shows unfitness to continue as an officers; or
- does not meet the standard of conduct the community reasonably expects of a police officer.

**Corrupt conduct** is conduct involving the exercise of a police officer's powers that is dishonest or not impartial or a breach of trust that could, if proved, be:

- a criminal offence; or
- a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

### **Process for police misconduct**

When the CCC refers alleged police misconduct to the QPS to consider disciplinary proceedings, the QPS appoints a prescribed officer to consider the matter and decide whether or not to initiate disciplinary proceedings.

If the decision is not to initiate such proceedings, under the current legislation the CCC has no power to request QCAT to review that decision.

If the prescribed officer decides to initiate such proceedings, a disciplinary hearing follows, after which the prescribed officer will come to a decision. If the CCC is not satisfied with that decision, it has the power to seek review of that decision by QCAT. This is called the 'review jurisdiction'.

### **Process for corrupt conduct**

The CCC may refer alleged official misconduct to the QPS to consider disciplinary proceedings. If so, the QPS appoints a prescribed officer to consider the matter and decide whether or not to initiate disciplinary proceedings.

If the decision is not to initiate such proceedings, the CCC can take the matter directly to QCAT to commence disciplinary proceedings. This is called referring a matter in its 'original jurisdiction'.

If the prescribed officer initiates disciplinary proceedings but the CCC is not satisfied with the outcome, it can seek a review of that decision by QCAT. This is called referring a matter in the CCC's "review jurisdiction".

QCAT may, on finding an allegation of corrupt conduct proved against a person, order that the person—

(a) be dismissed; or

(b) be reduced in rank or salary level; or

(c) forfeit, or have deferred, a salary increment or increase to which the prescribed person would ordinarily be entitled; or

(d) be fined a stated amount that is to be deducted from—

(i) the person's periodic salary payment in an amount not more than an amount equal to the value of 2 penalty units per payment; or

(ii) the person's monetary entitlements, other than superannuation entitlements, on termination of the person's service.

### **Amendments to the Current Legislation**

We consider that the current legislation must be amended to ensure that when the CCC refers alleged police misconduct to the QPS to consider disciplinary proceedings, and the QPS decides not to initiate disciplinary proceedings, the decision is reviewable by QCAT.

This would create a similar situation as is currently the case for corrupt conduct, and the CCC could then take the matter directly to QCAT to commence disciplinary proceedings.

Lawyer Andrew Boe, representing the Doomadgee family, described the outcome as "perverse and obscene".

"If the end result of that examination is that there is no further avenue then this is a complete systemic disgrace," Mr Boe said.

## Conclusion

We consider that it is vitally important that the public has full confidence in its police service; and one of the key ways in ensuring police integrity is through a complaint handling process that maintains public confidence in the police service, and ensures that the community's respect and trust is preserved through scrupulous examination, objectivity and consistency in dealing with complaints.

We cannot emphasise enough the importance of Aboriginal and Torres Strait Islander people receiving a competent and consistent policing service, and confidence that when police officers act inappropriately, their conduct will be investigated in a thorough and transparent manner.

This will go some way in ensuring that Aboriginal and Torres Strait Islander people can build a stronger relationship with the Police Service, which has often been less than satisfactory in the past for a number of reasons, resulting from historical legacies that include the Police Service's role in enforcing laws, carrying out government policy and the ongoing issue of building trust and confidence between the police and Aboriginal and Torres Strait Islander people.

We thank you for your careful consideration of these submissions. I close by also acknowledging the assistance provided to me by Mr Rory Downey, our Coronial and Public Sector Monitoring Officer in the initial draft of this submission.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Shane Duffy'. The signature is written in a cursive, flowing style with a large initial 'S'.

Mr. Shane Duffy

Chief Executive Officer