



Crime and Corruption Commission
QUEENSLAND

August 2015

CCC statement regarding its involvement in investigations arising from an incident at the Surfers Paradise Police Station in January 2012

Introduction

On 13 August 2015, the Queensland Council for Civil Liberties wrote to the Acting Crime and Corruption Commission (CCC) Chairman Ann Gummow in relation to investigations arising from the assault of a man in the Surfers Paradise police station in January 2012 and the release of CCTV footage of that incident.

The CCC acknowledges the community concern that, while officers who appeared to use excessive force against a member of the public were not subject to criminal charges, the officer who allegedly released the footage of such an event is facing criminal charges.

The CCC considered the issues raised in the correspondence and determined it was in the public interest to prepare a public statement to address the issues raised by the Queensland Council for Civil Liberties. The CCC replied to the Queensland Council for Civil Liberties on 14 August 2015 advising it would make such a public statement.

In the interests of public confidence and transparency, the CCC believes it is important to detail:

- how the original 2012 incident was handled by the then Crime and Misconduct Commission (CMC),
- the involvement the CMC had in decisions not to pursue criminal charges against any of the officers involved in the original incident,
- the CMC's involvement in the police discipline process against the officers in the original incident,
- the CMC's involvement in the police discipline process in a related investigation of unauthorised release of information and
- recommendations the CMC and CCC have made in relation to the police discipline system.

At no stage has the CCC said it would launch an inquiry or an investigation, or re-investigate these matters.

CMC involvement in the investigation of allegations that police officers used excessive force

On 8 February 2012, the CMC was notified by the Queensland Police Service, via its Ethical Standards Command (ESC), that a man had made a complaint of assault against several of its officers.

The complaint was made in person at the Surfers Paradise police station on 6 February 2012 alleging assault by the two arresting officers whilst in custody on 29 January 2012. There was a further allegation of assault arising out of an incident in the basement of the Surfers Paradise Police station.

The ESC advised the CMC that it had already commenced its investigation. The CMC understands this investigation commenced on 8 February 2012, two days after the initial complaint.

The CMC advised the ESC that they should proceed with the investigation. In making that decision, the CMC was aware that the ESC:

- sent five ESC investigators to Surfers Paradise to interview persons of interest, including the complainant and the police officers involved, and
- secured the CCTV footage from the Surfers Paradise police station.

By 9 February 2012, the ESC provided the CCTV footage to the CMC.

Based on the footage, the CMC asked the ESC to provide it with an interim report which should include the inquiries undertaken to date and address the issue of officers' failure to report the incident.

According to the CMC's policies at the time which guided its decision making in relation to the assessment of complaints of official misconduct, the CMC was satisfied that this level of oversight was

sufficient having regard to the nature of the complaint, the information provided to the CMC and the capacity of the QPS to deal with the matter.

On 15 February 2012, CCTV footage of the incident in the basement of the Surfers Paradise police station appeared in the media. Considering there was significant public and media concern being expressed about the level of force used by the police against a member of the public, the CMC decided that, to maintain public confidence, the matter required closer oversight. Consequently it became a joint ESC/CMC investigation.

On 17 February 2012, the complainant made a complaint directly to the CMC via its website.

The CMC and ESC joint investigation continued. The CMC and ESC maintained contact with the complainant and his legal representative.

The CMC considered whether a criminal charge of common assault was likely to succeed in court without evidence from the complainant. It was decided in consultation with ESC that without evidence from the victim, a criminal prosecution against any officer was unlikely to succeed. In May 2012, the CMC advised the complainant's legal representative that to proceed criminally against any officer, his client would be required to make a statement. The CMC was preparing to take a statement from the complainant.

In September 2012, the complainant's legal representative wrote to the CMC advising that he had decided not to proceed with the criminal complaint.

On 24 October 2012, the matter ceased being a joint investigation. However, the CMC continued to oversee the ESC's ongoing disciplinary investigation into the officers involved in the original incident and directed that ESC advise the CMC of the outcome before proceeding with any disciplinary action.

As part of this oversight arrangement, on 14 January 2013 the CMC received the ESC's investigation report into the original incident. The ESC found that allegations were capable of being substantiated against two of the officers. These allegations related to excessive force and a failure to report. The ESC found that allegations against two of the officers were not capable of being substantiated.

On 11 February 2013, the CMC wrote to ESC. The CMC agreed with the findings of the disciplinary investigation and that disciplinary hearings should commence against the two officers in relation to the allegations that were capable of being substantiated. The CMC further agreed with the ESC that a Deputy Commissioner should preside over the disciplinary hearings, considering the seriousness of the allegations, because a Deputy Commissioner has available the full range of disciplinary sanctions from caution or reprimand to dismissal.

The conduct and timing of QPS disciplinary hearings and subsequent sanctions are a matter for the QPS.

Throughout 2013 and 2014, the CMC requested updates from the QPS on the progress of the disciplinary hearings and were advised that the proceedings were ongoing.

On 15 August 2014, the now CCC received advice from the QPS that one officer had resigned and no further action would be taken. By resigning, the officer removed himself from the discipline process.

In the case of the second officer, the Deputy Commissioner imposed a sanction of dismissal, suspended on the condition the officer not commit any acts of misconduct for a period of two years. The officer was also ordered to perform community service.

The CCC had 14 days to review the Deputy Commissioner's decision in the Queensland Civil and Administrative Tribunal (QCAT).

For context, several months earlier the CCC had reviewed in QCAT another decision by the QPS to impose a suspended sanction on an officer. The CCC was successful in having the suspension removed.

However, the officer appealed this decision to the Queensland Court of Appeal. This case was *Flegg v CMC & O'Regan [2014] QCA 42*. The Court by majority confirmed the law in Queensland that a suspended sanction is a valid sanction and not a mere formality. This decision is publicly available <http://archive.sclqld.org.au/qjudgment/2014/QCA14-042.pdf>.

In light of these decisions, the CCC did not believe there was any reasonable prospect of success in appealing the decision of the QPS to suspend the dismissal of the officer involved in the original incident.

CMC/CCC involvement in investigation of allegations of unauthorised release of information

The CMC received a complaint on 15 February 2012 in relation to allegations of unauthorised release of information by an officer attached to the South Eastern Police region. The CMC referred the matter to the QPS for investigation with a requirement that the outcome be reviewed by the CMC prior to finalisation.

On 4 October 2012, the CMC received advice from the QPS that they had finalised their investigation and were preparing to commence disciplinary hearings against the officer. The CMC suggested the prescribed officer for the disciplinary hearing be a Deputy Commissioner, considering the seriousness of the allegations, because a Deputy Commissioner has available the full range of disciplinary sanctions from caution or reprimand to dismissal.

As there is a related criminal matter before the courts, the CCC is unable to comment further about this process. However, the CCC can confirm that it was not involved in the decision to commence criminal proceedings.

Questions by the Queensland Council for Civil Liberties

In the submission by the Queensland Council for Civil Liberties, it requested the CCC answer the following questions:

Q1 *Was any police investigation actually underway at the time that the video was allegedly leaked to the media?*

As outlined above, the QPS Ethical Standards Command, with the CMC's oversight, had commenced its investigation on 8 February 2012. The CMC notes this was seven days before the CCTV footage was published by the media.

Q2 *Why did the "police investigating police" scenario in this matter result in none of the police who are filmed assaulting the individual concerned being criminally charged?*

Only one police officer involved in the original incident was ever considered for a criminal prosecution for common assault.

It was the CMC's view at the time that without a statement from the victim in this case a criminal prosecution was unlikely to succeed. On that basis, the CMC did not raise concerns with the QPS about the decision to not commence a prosecution.

However, the CMC recommended that the QPS consider the inclusion of additional conduct which was depicted in the CCTV footage of excessive use of force by the officer as part of the disciplinary hearing.

The CCC acknowledges that a prosecution for a common assault and other offences can commence without a criminal complaint, however possible defences need to be taken into account.

The CCC notes that on the facts of this matter possible criminal defences were raised by the police officers involved, which were unlikely to be adequately rebutted without the evidence of the complainant.

Q 3 What were the terms of the confidential civil action and particularly, what was the dollar value of the payment made to the victim in this matter at the time of the settlement of his civil suit?

The CCC/CMC was not a party to this civil action.

Recommendations to improve the police discipline system

The CCC remains concerned about a number of aspects of the police discipline system in Queensland.

In particular, the CCC is concerned about the prevalence of the suspension of sanctions by the QPS, which has the potential to undermine public confidence in the QPS and the discipline system it administers. Recent QCAT decisions from disputed disciplinary hearings have resulted in outcomes that may be considered to be at odds with community expectations.

For some years, the CCC/CMC has been involved in reviews of the police complaints, discipline and misconduct system.

In its 2010 report *Setting the Standard*, the CMC identified four essential characteristics of a model police discipline system: it should be simple, effective, transparent and strong. The CMC made eleven recommendations to improve the police complaints, discipline and misconduct system.

In 2011 the Queensland Government appointed an independent expert panel to review the policies and procedures, steps and processes in the discipline system. The resulting report, *Simple, Effective, Transparent, Strong* made recommendations for both broad and specific improvements to the system.

The government of the day accepted all but one of the 57 recommendations of the panel. Unfortunately, despite the support of the Parliamentary Crime and Misconduct Committee (PCMC) the implementation of the recommendations stalled under successive governments. Had those recommendations been implemented the QPS would have had no power to suspend a sanction of dismissal.

The most recent submission that addresses concerns in the police discipline system is the CCC's July 2015 submission to the current *Parliamentary Crime and Corruption Committee Review of the Crime and Corruption Act 2001*.

The CCC encourages interested members of the public to read these submissions and the recommendations that have been made to improve the police discipline system:

- [*Setting the standard: A review of current processes for the management of police discipline and misconduct matters*](#) (December 2010)
- [*Simple, Effective, Transparent, Strong – An independent review of the Queensland police complaints, discipline and misconduct system*](#) (May 2011)
- [*Three-Yearly Review of the Crime and Misconduct Commission – Submission by the CMC to the PCMC*](#) (15 July 2011) @ pp. 57–58.
- Parliamentary Crime and Misconduct Committee, [Report No. 86](#), May 2012 @ pp. 67–69
- [*CCC submission to the PCCC Review of the Crime and Corruption Act 2001*](#) (July 2015) @ pp. 71–72

Conclusion

On 1 September 2015, Alan MacSporran QC will commence as the Chairman of the Crime and Corruption Commission. Mr MacSporran will be briefed on the issues relating to the police discipline system, specifically the issues raised in the CCC's recent submission to the PCCC.



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